

1 Robert A. Naeve (State Bar No. 106095)  
2 rnaeve@jonesday.com  
3 Cary D. Sullivan (State Bar No. 228527)  
4 carysullivan@jonesday.com  
5 JONES DAY  
6 3161 Michelson Drive, Suite 800  
7 Irvine, CA 92612-4408  
8 Telephone: +1.949.851.3939  
9 Facsimile: +1.949.553.7539

10 Nathaniel P. Garrett (State Bar No. 248211)  
11 ngarrett@jonesday.com  
12 JONES DAY  
13 555 California Street, 26th Floor  
14 San Francisco, CA 94104-1500  
15 Telephone: +1.415.626.3939  
16 Facsimile: +1.415.875.5700

17 Attorneys for Defendant  
18 David Yamasaki

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

Courthouse News Service,

Plaintiff,

v.

David Yamasaki, in his official  
capacity as Court Executive  
Officer/Clerk of the Orange County  
Superior Court,

Defendant.

Case No. 8:17-cv-00126 AG (KESx)

Assigned for all purposes to  
Hon. Andrew J. Guilford

**DEFENDANT DAVID  
YAMASAKI'S OBJECTIONS TO  
EVIDENCE SUBMITTED IN  
SUPPORT OF OPPOSITION TO  
MOTION FOR SUMMARY  
JUDGMENT**

Date: January 29, 2018  
Time: 10:00 a.m.  
Courtroom: 10D  
Judge: Hon. Andrew J. Guilford

1                   Defendant David Yamasaki, in his official capacity as Court Executive  
 2 Officer/Clerk of the Orange County Superior Court (“OCSC”) submits the  
 3 following evidentiary objections to the declarations of William Girdner, Joanna  
 4 Mendoza, Craig Rosenberg, Jonathan Fetterly, accompanying exhibits thereto,  
 5 exhibits attached to ECF No. 12, and exhibits attached to ECF No. 92 referenced by  
 6 Plaintiff Courthouse News Service (“CNS”) In Support of Its Opposition to  
 7 OCSC’s Motion for Summary Judgment. OCSC respectfully requests the Court  
 8 sustain the below objections and strike the following evidence.

9                   **I. OBJECTIONS TO DEPOSITION OF WILLIAM GIRDNER**

10                   **OBJECTION NO. 1:**

11                   “CNS's news media subscribers rely on us to provide them with timely  
 12 information about civil litigation, our specialty, so they can provide information  
 13 about those cases to their own readers and viewers. In recent years, as the traditional  
 14 news industry has withered, we have seen an increasing number of news  
 15 organizations become CNS subscribers. At the same time, we have seen news  
 16 organizations cut back on court coverage. The end result is that in many courts CNS  
 17 effectively serves as a pool reporter, with its reporter sometimes the only journalist  
 18 reporting on that court.” (ECF No. 86, Declaration of William Girdner (“Girdner  
 19 Decl.”) ¶ 12, 5:13-20.)

20                   **GROUND FOR OBJECTION NO. 1:**

21                   **Lack of foundation as to personal knowledge; speculation.** Fed. R. Evid.  
 22 601, 602; Fed. R. Evid. 701.

23                   Mr. Girdner fails to establish foundation for his speculative statement as to  
 24 what CNS subscribers purportedly “rely on” CNS to provide. He further fails to  
 25 establish foundation for his assertion regarding how other news organizations handle  
 26 “court coverage.” As a result, his concluding sentence regarding the “end result”  
 27 necessarily lacks foundation as well.

**OBJECTION NO. 2:**

“I have observed a longstanding tradition in state and federal courts throughout the country whereby news reporters review new complaints on the day they are received, before clerks performed the administrative tasks that follow a court's receipt of a new complaint.” (ECF No. 86, Girdner Decl. ¶ 19, 8:11-14.)

**GROUND FOR OBJECTION NO. 2:**

**Lack of foundation as to personal knowledge; improper legal conclusion; contradicted by the evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner fails to establish foundation for his purported observance of “a longstanding tradition in state and federal courts around the country,” or even which courts those are. Mr. Girdner also purports to state a legal conclusion in this context by opining as to a purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986). In addition, Mr. Girdner’s statement is contradicted by evidence submitted both by CNS and OCSC, specifically numerous third-party declarations in which court reporters actually contradict Mr. Girdner’s assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS demonstrating that, even in California alone, there is no such tradition. ECF No. 75-6, Declaration of Cary D. Sullivan (“Sullivan Decl.”) ¶ 2, Ex. A (pp. 6-23).

**OBJECTION NO. 3:**

“Before the advent of e-filing, federal and state courts in California typically gave reporters access to the day's complaints by providing them in paper form in a box, bin or stack on, behind, beside, or near the intake counter at the end of the day, when courthouse beat reporters would visit the court to learn what had been filed that day.” (ECF No. 86, Girdner Decl. ¶ 20, 8:16-20.)

**GROUND FOR OBJECTION NO. 3:**

**Lack of foundation as to personal knowledge; contradicted by the evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

1                   Mr. Girdner fails to establish foundation for his assertion as to what California  
 2 state and federal courts “typically” did before the advent of e-filing, and which courts  
 3 those are. Moreover, Mr. Girdner’s statement is contradicted by evidence submitted  
 4 both by CNS and OCSC, specifically numerous third-party declarations in which  
 5 court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12, Abbott Decl.  
 6 ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7;  
 7 William Decl. ¶ 10, and the “report card” published by CNS demonstrating that, even  
 8 in California alone, there is no such tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex.  
 9 A (pp. 6-23).

10 **OBJECTION NO. 4:**

11                   “The tradition of press access was alive and well in the superior courts of  
 12 California when the paper medium was dominant.... Many of the superior courts  
 13 that had bad grades on the Report Card were willing to return traditional access to  
 14 news reporters.... These courts are addressed in detail in the declarations submitted  
 15 by myself, and current and former CNS employees, in the *Courthouse News v. Planet*  
 16 case.” (ECF No. 86, Girdner Decl. ¶ 33, 14:20-15:18.)

17 **GROUND FOR OBJECTION NO. 4:**

18                   **Lack of foundation as to personal knowledge; improper legal conclusion;**  
 19 **contradicted by the evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

20                   Mr. Girdner fails to establish foundation for his purported observance of “a  
 21 tradition of press access,” or even which courts observed such a tradition. Mr.  
 22 Girdner also purports to state a legal conclusion in this context by opining as to a  
 23 purported tradition. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).  
 24 In addition, Mr. Girdner’s statement is contradicted by evidence submitted both by  
 25 CNS and OCSC, specifically numerous third-party declarations in which court  
 26 reporters actually contradict Mr. Girnder’s assertion, ECF No. 12, Abbott Decl.  
 27 ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59; Ross Decl. ¶ 7;  
 28 William Decl. ¶ 10, and the “report card” published by CNS demonstrating that,

1 even in California alone, there is no such tradition. ECF No. 75-6, Declaration of  
 2 Cary D. Sullivan (“Sullivan Decl.”) ¶ 2, Ex. A (pp. 6-23).

3 **OBJECTION NO. 5:**

4 “...he [Alan Carlson] stated that he does not believe the press should have  
 5 access to new civil actions e-filed in his court until after they are officially “accepted”  
 6 into the court's docketing system.” (ECF No. 86, Girdner Decl. ¶ 34, 15:23-25.)

7 **GROUNDS FOR OBJECTION NO. 5:**

8 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

9 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court  
 10 statement, which is being offered for the truth of the matter asserted, constitutes  
 11 classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid.  
 12 § 801:5 (8th ed. 2017) (“If the evidentiary purpose is to prove a fact asserted, and  
 13 such purpose is not approved under Evid. R. 801(d), then the hearsay objection  
 14 should be sustained.”). In addition, Mr. Girdner’s statement is contradicted by Mr.  
 15 Carlson himself. *See* ECF No. 17-8, Declaration of Alan Carlson In Support of  
 16 Opposition to Motion for Preliminary Injunction (“Carlson Decl.”), ¶¶ 3-4.

17 **OBJECTION NO. 6:**

18 “After the remodel, the clerk then leased a room to The Orange County  
 19 Register directly across from the viewing area for court records, a room which I  
 20 understand, based on CNS's coverage of the court, that newspaper still leases today.”  
 21 (ECF No. 86, Girdner Decl. ¶ 45, 19:24-27.)

22 **GROUNDS FOR OBJECTION NO. 6:**

23 **Lack of foundation as to personal knowledge; contradicted by the**  
 24 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

25 Mr. Girdner fails to establish foundation for his purported knowledge  
 26 regarding whether and how the OCSC clerk supposedly leased space to the Orange  
 27 County Register. This statement is also directly contradicted by the reply declaration  
 28 of Jeff Wertheimer in which Mr. Wertheimer describes how the State of California

1 owns the building that houses OCSC's Central Justice Center, and how the State –  
 2 not OCSC – leases space in the building to each of the tenants in the building,  
 3 including the Orange County Register. Declaration of Jeff Wertheimer In Support  
 4 Of Reply ("Wertheimer Decl. ISO Reply") ¶ 2. This statement is further contradicted  
 5 by David Yamasaki's deposition testimony to the same effect. Declaration Cary D.  
 6 Sullivan In Support of Reply ("Sullivan Decl. ISO Reply") ¶ 7; Ex. E, David  
 7 Yamasaki Deposition Testimony ("Yamasaki Depo."), 114:16-21.

8 **OBJECTION NO. 7:**

9 "Based on my review of the transcript of Mr. Yamasaki's deposition in this  
 10 case, it is my understanding there is no reason, other than OCSC's current process-  
 11 first policy, why OCSC could not put a computer terminal into that room for the press  
 12 to review new complaints as they are received and before processing, including  
 13 complaints that are e-filed after the clerk's office closes for the day, which under  
 14 OCSC local rules are given that day's "filed" date if filed before midnight." (ECF No.  
 15 86, Girdner Decl. ¶ 45, 20:3-8.)

16 **GROUNDS FOR OBJECTION NO. 7:**

17 **Lack of foundation as to personal knowledge; contradicted by the**  
 18 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

19 Mr. Girdner fails to establish foundation for his assertions regarding OCSC's  
 20 purported "policy" as well as whether and how OCSC can place its public computer  
 21 terminals. Further, Mr. Girdner's suggestion that OCSC could place a terminal in a  
 22 room that it leases to the Orange County Registered is based on a false premise – that  
 23 OCSC somehow controls the room. As demonstrated in Mr. Wertheimer's reply  
 24 declaration and Mr. Yamasaki's deposition testimony, OCSC does not lease space to  
 25 The Register, nor does OCSC have any right to use or place anything in The  
 26 Register's room, because The Register leases that space directly from the State of  
 27 California. Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E,  
 28 Yamasaki Depo., 114:16-21.

**OBJECTION NO. 8:**

“In 2002, OCSC supervisor Connie Pilcher called a meeting to tell news reporters covering the court that they would no longer see new complaints in the press box at the end of the day, and would henceforth be required to review them on the day following receipt.” (ECF No. 86, Girdner Decl. ¶ 46, 20:9-13.)

**GROUND FOR OBJECTION NO. 8:**

**Inadmissible hearsay.** Fed. R. Evid. 801, 802.

Mr. Girdner’s assertion regarding Ms. Pilcher’s purported out-of-court statement, which is being offered for the truth of the matter asserted, constitutes classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. § 801:5 (8th ed. 2017) (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

**OBJECTION NO. 9:**

“Ms. Levitzky began to express sympathy and some agreement with our request, ...Mr. Slater acknowledged that press access to new complaints had been delayed by at least four or five days but expressed the view that such delays were just fine. He was adamant in his refusal to consider our request to reinstate traditional press access on the day of filing, and made it clear he was willing to litigate the matter.” (ECF No. 86, Girdner Decl. ¶ 47, 20:17-22.)

**GROUND FOR OBJECTION NO. 9:**

**Inadmissible hearsay; lack of foundation as to personal knowledge; contradicted by the evidence.** Fed. R. Evid. 801, 802; Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

Mr. Girdner’s assertions regarding Ms. Levitzky’s and Mr. Slater’s purported out-of-court statements, offered for the truth of the matters asserted, constitute classic and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not

1 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

2 Mr. Girdner also fails to establish foundation for his assertion regarding the  
 3 purported “traditional press access on the day of filing,” which statement is  
 4 contradicted by evidence in any event, specifically numerous third-party declarations  
 5 in which court reporters actually contradict Mr. Girnder’s assertion, ECF No. 12,  
 6 Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16; Marshall Decl. ¶ 59;  
 7 Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card” published by CNS  
 8 demonstrating that, even in California alone, there is no such tradition. ECF No. 75-  
 9 6, Sullivan Decl. ¶ 2, Ex. A(pp. 6-23).

10 **OBJECTION NO. 10:**

11 “...Ms. Mehta informed the clerk's staff that because of the delays, the Times  
 12 had largely stopped reporting on new cases filed in that court. She explained that  
 13 reporters could not ‘sell’ a breaking story to editors when it was a day old.” (ECF  
 14 No. 86, Girdner Decl. ¶ 48, 21:1-4.)

15 **GROUND FOR OBJECTION NO. 10:**

16 **Inadmissible hearsay.** Fed. R. Evid. 801, 802.

17 Mr. Girdner’s assertion regarding Ms. Mehta’s purported out-of-court  
 18 statements, offered for the truth of the matters asserted, constitutes classic and  
 19 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5  
 20 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not  
 21 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

22 **OBJECTION NO. 11:**

23 “And it has been CNS's experience that the more important and newsworthy  
 24 actions tend to be filed late in the day, making them particularly prone to extended  
 25 delays in press access where courts condition access on processing.” (ECF No. 86,  
 26 Girdner Decl. ¶ 53, 22:13-16.)

27 **GROUND FOR OBJECTION NO. 11:**

28 **Lack of foundation as to personal knowledge; irrelevant; misleading and**

1 **prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

2 Mr. Girdner fails to establish foundation for his assertion regarding “more  
 3 important and newsworthy actions” supposedly being filed “late in the day,” nor  
 4 does he identify or provide data to support this bald assertion. Moreover, the  
 5 assertion is rendered irrelevant as a matter of fact by CNS’s repeated admission in  
 6 its evidentiary objections to OCSC’s summary judgment motion that, “Courthouse  
 7 News Service is not requesting that the OCSC identify and promptly publish only  
 8 ‘newsworthy’ complaints; it is asking that OCSC make all complaints available the  
 9 same day they are submitted by the filer.” ECF No. 93, CNS Evidentiary  
 10 Objections (“CNS Evid. Obj.”), 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s  
 11 focus on supposedly “newsworthy” complaints is irrelevant and can only be  
 12 intended to confuse or mislead the Court, and is therefore prejudicial.

13 **OBJECTION NO. 12:**

14 “Since the *Times* no longer staffs OCSC with a reporter, and the story was  
 15 written from Sacramento, it is very likely the complaint was forwarded to the *Times*  
 16 by the plaintiff attorney, allowing the *Times* to play up the story while beating its  
 17 rival of old, *The Orange County Register*.” (ECF No. 86, Girdner Decl. ¶ 58, 24:10-  
 18 13.)

19 **GROUNDS FOR OBJECTION NO. 12:**

20 **Lack of foundation as to personal knowledge; contradicted by the**  
 21 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

22 Mr. Girdner fails to establish foundation for his assertion that “the *Times* no  
 23 longer staffs OCSC with a reporter.” He further fails to establish foundation for his  
 24 speculation as to how the *Times* received the subject complaint. As set forth in Ms.  
 25 Ochoa’s reply declaration, the subject complaint was made public at 9:28 a.m. on  
 26 August 29, 2017, the morning of the day the *Times* published its story. Declaration  
 27 of Sara Ochoa In Support Of Reply (“Ochoa Decl. ISO Reply”) ¶ 6. Mr. Girdner  
 28 fails to explain why the *Times* would supposedly be unable to access the complaint

1 on the public docket and draft and publish a story about the complaint in the 5½ hours  
2 between when the complaint was made public and when the Times published its story  
3 at 3:00 p.m. that afternoon.

4 **OBJECTION NO. 13:**

5 “As a result of the Clerk's process-first policy, reporting on an important  
6 complaint against a celebrated local business was held up by 23 and 26 normal  
7 hours.” (ECF No. 86. Girdner Decl. ¶ 58, 24:15-17.)

8 **GROUND FOR OBJECTION NO. 13:**

9 **Lack of foundation as to personal knowledge; irrelevant; misleading and**  
10 **prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

11 Mr. Girdner fails to establish foundation for his assertion regarding OCSC's  
12 “policy.” Moreover, this assertion is rendered irrelevant as a matter of fact by  
13 CNS's repeated admission in its evidentiary objections to OCSC's summary  
14 judgment motion that, “Courthouse News Service is not requesting that the OCSC  
15 identify and promptly publish only ‘newsworthy’ complaints; it is asking that  
16 OCSC make all complaints available the same day they are submitted by the filer.”  
17 ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS's focus  
18 on supposedly “important” or newsworthy complaints is irrelevant and can only be  
19 intended to confuse or mislead the Court, and is therefore prejudicial.

20 **OBJECTION NO. 14:**

21 “[Ms. Levitzky] informed me that she discussed the matter with her supervisor,  
22 who flatly denied the delays.” (ECF No. 86, Girdner Decl. ¶ 61, 25:25-26:1.)

23 **GROUND FOR OBJECTION NO. 14:**

24 **Inadmissible hearsay.** Fed. R. Evid. 801, 802.

25 Mr. Girdner's assertion regarding Ms. Levitzky's purported out-of-court  
26 statement, as well as that of her “supervisor,” both of which are offered for the truth  
27 of the matters asserted, constitutes classic and inadmissible hearsay. *See* Fed. R.  
28 Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to

1 prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then  
2 the hearsay objection should be sustained.”).

3 **OBJECTION NO. 15:**

4 “At that meeting, Mr. Carlson acknowledged that there was a delay between  
5 when the court received a civil complaint fore-filing and when it became available to  
6 the press and public. He said the delay was due to a backlog in processing other  
7 filings before his staff processed new complaints.” (ECF No. 86, Girdner Decl. ¶ 64,  
8 26:20-24.)

9 **GROUNDS FOR OBJECTION NO. 15:**

10 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

11 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court  
12 statements, offered for the truth of the matters asserted, constitute classic and  
13 inadmissible hearsay. Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If  
14 the evidentiary purpose is to prove a fact asserted, and such purpose is not approved  
15 under Evid. R. 801(d), then the hearsay objection should be sustained.”). Mr.  
16 Girdner’s assertion is also contradicted by Mr. Carlson himself. *See* Carlson Decl.,  
17 ¶¶ 3-4.

18 **OBJECTION NO. 16:**

19 “Mr. Carlson acknowledged then in 2010 that the in-box was ‘technically  
20 possible,’ or words to that effect...” (ECF No. 86, Girdner Decl. ¶ 65, 27:1-2.)

21 **GROUNDS FOR OBJECTION NO. 16:**

22 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

23 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court  
24 statements, offered for the truth of the matters asserted, constitute classic and  
25 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5  
26 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not  
27 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

28 Mr. Girdner’s assertion is also contradicted by Mr. Carlson himself. *See* Carlson

1 Decl., ¶ 5.

2 **OBJECTION NO. 17:**

3 “In the meeting with Mr. Carlson, he argued with vehemence that the press  
4 had no right to see a filing until his staff had completed administrative processing,  
5 saying words to the effect, ‘It’s not filed until I put my stamp on it.’” (ECF No. 86,  
6 Girdner Decl. ¶ 66, 5:7.)

7 **GROUNDS FOR OBJECTION NO. 17:**

8 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

9 Mr. Girdner’s assertion regarding Mr. Carlson’s purported out-of-court  
10 statements, offered for the truth of the matters asserted, constitute classic and  
11 inadmissible hearsay. Mr. Girdner’s assertion is also contradicted by Mr. Carlson  
12 himself. *See* Carlson Decl., ¶¶ 3-4.

13 **OBJECTION NO. 18:**

14 “The introduction of e-filing rules was accompanied by what I saw as a pincer  
15 movement to degrade traditional timely access. The first part of the pincer movement  
16 was a proposed rule that gave clerks a justification for withholding access until new  
17 filings were processed.” (ECF No. 86, Girdner Decl. ¶ 75, 30-15-18.)

18 **GROUNDS FOR OBJECTION NO. 18:**

19 **Lack of foundation as to personal knowledge; improper legal conclusion;**  
20 **contradicted by the evidence; inadmissible hearsay; contradicted by evidence.**  
21 Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

22 Mr. Girdner opines as to a so-called “pincer movement” without establishing  
23 foundation that such a movement is anything more than a figment of his own  
24 imagination. Moreover, Mr. Girdner’s implication of a conspiracy is directly  
25 contradicted by the California Rules of Court, which provide that e-filing “does not  
26 include the processing and review of the document, and its entry into the court  
27 records, which are necessary for a document to be officially filed.” *See* Cal. R. Ct.  
28 2.250(B)(7).

1 **OBJECTION NO. 19:**

2 “Similarly, state courts in Alabama, Connecticut, Georgia, Nevada, New York,  
3 Utah, and most recently, in Fresno County, California, also provide electronic access  
4 to new e-filed civil complaints upon receipt, before processing. As with federal  
5 district courts, there are variations in how the state courts provide that access. Such  
6 access can be provided online over the Internet, locally through terminals at the  
7 courthouse, or through both methods. In some courts, new e-filed actions are  
8 automatically accepted, while in others complaints bear only temporary numbers  
9 when they first appear in the electronic in-box and receive a permanent case number  
10 only after administrative tasks are completed. Some jurisdictions limit electronic in-  
11 box access to credentialed press, while others open the in-box to any interested  
12 member of the public. In some jurisdictions, the press can review late filed e-filed  
13 complaints at the courthouse, as they are received, in press rooms even after the  
14 clerk's office has shut for the night. In all instances, the method used provides timely  
15 access to new civil complaints as soon as they are filed, upon receipt, before they are  
16 processed, akin to the pre-docketing access traditionally provided to paper-filed  
17 complaints.” (ECF No. 86, Girdner Decl. ¶ 92, 26:8-23.)

18 **GROUND FOR OBJECTION NO. 19:**

19 **Lack of foundation as to personal knowledge; improper legal conclusion;**  
20 **contradicted by the evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

21 Mr. Girdner fails to establish foundation for his assertions regarding the  
22 various practices ascribed to state and federal courts across the country, and he fails  
23 to identify the specific courts referenced. Moreover, Mr. Girdner's assertions are  
24 contradicted by evidence submitted both by CNS and OCSC, specifically numerous  
25 third-party declarations in which court reporters actually contradict Mr. Girnder's  
26 assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16;  
27 Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the “report card”  
28 published by CNS demonstrating that, even in California alone, there is no such

1 tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

2 In addition, Mr. Girdner purports to state a legal conclusion as to whether and  
3 how various purported methods provide “timely access” to new complaints.

4 **OBJECTION NO. 20:**

5 “Implementing an electronic in-box is a matter of fairly basic programming by  
6 court IT staff or e-filing vendors. I understand from the clerk for Georgia’s Fulton  
7 County Superior Court that when that court decided to set up its electronic in-box, its  
8 e-filing vendor was able to do so quickly and at no cost to the court.” (ECF No. 86,  
9 Girdner Decl. ¶ 93, 36:24-37:1.)

10 **GROUND FOR OBJECTION NO. 20:**

11 **Lack of foundation as to personal knowledge; speculation; inadmissible  
12 hearsay.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

13 Mr. Girdner fails to establish foundation for his assertion regarding whether  
14 and how “an electronic in-box” could be added through “fairly basic programming,”  
15 to OCSC’s court case management system (“CCMS”). Mr. Girdner has no personal  
16 knowledge regarding OCSC’s CCMS, and cannot establish otherwise, rendering his  
17 suggestion pure speculation.

18 In addition, Mr. Girdner’s assertion regarding the Georgia clerk’s purported  
19 out-of-court statements, offered for the truth of the matter asserted, constitutes classic  
20 and inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At §  
21 801:5 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not  
22 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

23 **OBJECTION NO. 21:**

24 “The ease with which courts have been able to set up electronic in-boxes is  
25 consistent with my own experience based on supervising CNS’s programmers who  
26 configure our subscribers’ means of accessing CNS content electronically.” (ECF No.  
27 86, Girdner Decl. ¶ 93, 37:8-11.)

1 **GROUNDΣ FOR OBJECTION NO. 21:**

2       **Lack of foundation as to personal knowledge; irrelevant.** Fed. R. Evid.  
3 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402.

4       Mr. Girdner fails to establish foundation for his purported knowledge  
5 regarding “the ease with which courts have been able to set up electronic in-boxes,”  
6 and he fails to identify any of the courts with which he’s supposedly familiar.

7       In addition, Mr. Girdner’s purported “experience supervising CNS’s  
8 programmers who configure our subscribers’ means of accessing CNS content  
9 electronically” is irrelevant with respect to court e-filing systems. Because Mr.  
10 Girdner fails to establish foundation for any purported relation between court e-filing  
11 systems, including OCSC’s CCMS (about which Mr. Girdner has no personal  
12 knowledge, and he cannot establish otherwise), and CNS’s own electronic systems,  
13 which do not involve any sort of court filings, such that Mr. Girdner’s assertion is  
14 irrelevant as a matter of fact.

15 **OBJECTION NO. 22:**

16       “On December 11, 2017, I communicated via email with Fresno Superior  
17 Court’s manager in charge of its Case Management System, Kevin Anderson. In this  
18 e-mail exchange, Mr. Anderson explained how Fresno County Superior Court  
19 designed and successfully implemented a technological security option that  
20 safeguarded confidential filings from public view in the press review site. A true and  
21 correct copy of this email string is attached at Exhibit 20.” (ECF No. 86, Girdner  
22 Decl. ¶ 100, 42:19-24.)

23 **GROUNDΣ FOR OBJECTION NO. 22:**

24       **Inadmissible hearsay; violation of the Best Evidence Rule; contradicted  
25 by evidence.** Fed. R. Evid. 801, 802; Fed. R. Evid. 1002.

26       Mr. Girdner’s assertions regarding Mr. Anderson’s purported out-of-court  
27 statements, offered for the truth of the matters asserted, constitute classic and  
28 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5

1 ("If the evidentiary purpose is to prove a fact asserted, and such purpose is not  
2 approved under Evid. R. 801(d), then the hearsay objection should be sustained.").

3 In addition, Mr. Girdner's characterization of Mr. Anderson's statements is  
4 contradicted by the attached email string, which speaks for itself, and in which Mr.  
5 Anderson relays that the changes were made by an outside vendor, and that Mr.  
6 Anderson lacks any personal knowledge about them. *See* ECF No. 87, Ex. 20 to  
7 Girdner Decl. (pp. 544-557).

8 **OBJECTION NO. 23:**

9 "Other state courts that provide electronic access to new e-filed civil  
10 complaints upon receipt, before clerk review or processing, include Fresno Superior  
11 Court in California, four courts in Georgia (the State Court of Fulton County, the  
12 Superior Court of Fulton County, the State Court of DeKalb County, and the Superior  
13 Court of DeKalb County), Hartford County Superior Court in Connecticut, Jefferson  
14 County Circuit Court in Alabama, Salt Lake County Court (Third Judicial District)  
15 in Utah, and the Eighth Judicial District Court of Nevada." (ECF No. 86, Girdner  
16 Decl. ¶ 111, 50:21-27.)

17 **GROUND FOR OBJECTION NO. 23:**

18 **Lack of foundation as to personal knowledge; contradicted by the  
19 evidence; irrelevant.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401,  
20 402.

21 Mr. Girdner fails to establish foundation for his assertions regarding the  
22 practices ascribed to the various courts. Moreover, Mr. Girdner's assertions are  
23 contradicted by evidence submitted both by CNS and OCSC, specifically numerous  
24 third-party declarations in which court reporters actually contradict Mr. Girnder's  
25 assertion, ECF No. 12, Abbott Decl. ¶¶ 14, 35; Angione Decl. ¶ 49; Lee Decl. ¶ 16;  
26 Marshall Decl. ¶ 59; Ross Decl. ¶ 7; William Decl. ¶ 10, and the "report card"  
27 published by CNS demonstrating that, even in California alone, there is no such  
28 tradition. ECF No. 75-6, Sullivan Decl. ¶ 2, Ex. A (pp. 6-23).

1           In addition, Mr. Girdner does not state that such electronic access means *public*  
2 access, thereby rendering the assertion irrelevant as a matter of fact.

3 **OBJECTION NO. 24:**

4           “The Clerk's Office at OCSC has followed a similar roller coaster when it  
5 comes to processing. Measured over five days just before May 29, 2016, when Judge  
6 James Otero handed down his motion for summary judgment ruling in the Planet  
7 case, the OCSC Clerk's Office was taking two days to process, providing access to  
8 only 6% of the new unlimited complaints on the day of filing, and withholding 82%  
9 for two days or more. After the ruling, the Clerk's Office sped up processing and by  
10 mid-August 2016, nearly half of the unlimited complaints, 51.5%, could be seen on  
11 the day of filing with a lesser 9.4% withheld for two days or more. But by early  
12 October 2016 the Clerk's office had dropped down low again and was processing  
13 only 12.9% on the day of filing while withholding 59.5% for two days or more.”  
14 (ECF No. 86, Girdner Decl. ¶ 131, 62:5-15.)

15 **GROUND FOR OBJECTION NO. 24:**

16           **Lack of foundation as to personal knowledge; contradicted by the**  
17 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

18           Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.  
19 Mr. Girdner fails to establish any analytical foundation for how he arrived at these  
20 statistics, fails to establish any foundation for his purported personal knowledge of  
21 the statistics, and further fails to identify or provide source data for the statistics  
22 themselves.

23           In addition, the referenced statistics are contradicted by OCSC business  
24 records, specifically the “Turnaround Reports” submitted with OCSC's preliminary  
25 injunction and summary judgment papers, which data underlies OCSC's calculations  
26 regarding when new civil unlimited complaints are made public relative to receipt.  
27 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
28 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2,

1 Declaration of Sara Ochoa (“Ochoa Decl.”) ¶¶ 28-29, Ex. C (pp. 20-30); ECF No.  
2 75-3, Declaration of Deborah T. Kruse (“Kruse Decl.”) ¶¶ 11-12. While CNS argues  
3 that OCSC’s calculations are a mischaracterization because they are based on  
4 business hours, CNS does not dispute the accuracy of the actual numbers. *See* ECF  
5 No. 83, CNS’s Opposition to OCSC’s Motion for Summary Judgment (“Opp.”),  
6 15:1-16:14.

7 **OBJECTION NO. 25:**

8 “In the next year, 2017, the Clerk’s Office followed the same pattern. The  
9 week before the complaint in CNS v. Yamasaki was filed on January 24, 2017, the  
10 Clerk’s Office was processing, and providing access to, only 21% of new unlimited  
11 complaints on the day of filing and 19.8% were withheld two days or more. In early  
12 February, the percentage of cases processed and able to be seen on the day of filing  
13 jumped up to 44.1% with 13.3% withheld two days or more. Then began a series of  
14 ups and downs, dropping to 22.1% of complaints processed and provided on the day  
15 of filing in early April, rising to 62.4% in mid-May, dropping to 8.4% in mid-July  
16 then jumping to 55.1% in mid-September, before dropping down to 39.8% being  
17 processed and provided to the press and public on the day of filing in mid-October  
18 2017, with 11.8% withheld two days or more.” (ECF No. 86, Girdner Decl. ¶ 132,  
19 62:16-26.)

20 **GROUND FOR OBJECTION NO. 25:**

21 **Lack of foundation as to personal knowledge; contradicted by the**  
22 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

23 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.  
24 Mr. Girdner fails to establish foundation for his purported personal knowledge of the  
25 statistics and further fails to establish foundation, and fails to identify or provide  
26 source data, for the statistics themselves.

27 In addition, the referenced statistics are contradicted by OCSC business  
28 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary

1 injunction and summary judgment papers, which data underlies OCSC's calculations  
2 regarding when new civil unlimited complaints are made public relative to receipt.  
3 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"  
4 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa  
5 Decl. ¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶ 11-12. While  
6 CNS argues that OCSC's calculations are a mischaracterization because they are  
7 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
8 *See* ECF No. 83, Opp., 15:1-16:14.

9 **OBJECTION NO. 26:**

10 "But the roller coaster is most pronounced in the Complex Division of OCSC,  
11 where the most important and newsworthy litigation is filed. In January of 2017, prior  
12 to CNS's filing of its complaint in this action, the complex unit provided access to  
13 only 3.2% of the newly filed complex complaints on the day of filing. In the month  
14 of February 2017, that percentage jumped modestly to 29.2%. The pace continued to  
15 ramp up to a peak of 42.1% in August 2017. In other words, timely access was  
16 provided to less than half the cases when the unit was working at its fastest pace. The  
17 processing rate then began to slide, dramatically. In October, only 13.5% of the new  
18 complex cases could be reviewed on the day they were filed, and by the end of  
19 December 2017, the monthly rate of access on the day of filing had dropped to 9.8%,  
20 back to the bottom where the roller coaster started out in late January." (ECF No. 86,  
21 Girdner Decl. ¶ 133, 63:5-16.)

22 **GROUND FOR OBJECTION NO. 26:**

23 **Lack of foundation as to personal knowledge; contradicted by the**  
24 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
25 R. Evid. 401, 402, 403.

26 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.  
27 Mr. Girdner fails to establish foundation for his purported personal knowledge of the  
28 statistics and further fails to establish foundation, and fails to identify or provide

1 source data, for the statistics themselves.

2 In addition, the referenced statistics are contradicted by OCSC business  
3 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary  
4 injunction and summary judgment papers, which data underlies OCSC’s calculations  
5 regarding when new civil unlimited complaints are made public relative to receipt.  
6 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
7 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa  
8 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
9 CNS argues that OCSC’s calculations are a mischaracterization because they are  
10 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
11 *See* ECF No. 83, Opp., 15:1-16:14.

12 Mr. Girdner also fails to establish foundation for his assertion regarding “most  
13 important and newsworthy litigation” supposedly being civil complex actions.  
14 Moreover, this assertion is rendered irrelevant as a matter of fact by CNS’s repeated  
15 admission in its evidentiary objections to OCSC’s summary judgment motion that,  
16 “Courthouse News Service is not requesting that the OCSC identify and promptly  
17 publish only ‘newsworthy’ complaints; it is asking that OCSC make all complaints  
18 available the same day they are submitted by the filer.” ECF No. 93, CNS Evid. Obj.,  
19 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on supposedly “newsworthy”  
20 civil complex complaints is irrelevant and can only be intended to confuse or mislead  
21 the Court, and is therefore prejudicial.

22 **OBJECTION NO. 27:**

23 “In sum, the statistics show that for the 488 complex complaints filed in 2017,  
24 about one fifth (21.9%) were made available without delay. The bulk of the complex  
25 complaints (78%) were withheld for one to seven days while they were processed.  
26 That set of withheld complex cases was about evenly split between two fifths (39.5%)  
27 that were withheld one day and two fifths (38.5%) that were withheld for two days  
28 up to seven days. By even the most elastic interpretation of the word ‘timely,’ such

1 access cannot be considered timely access.” (ECF No. 86, Girdner Decl. ¶ 134, 62:22-  
2 64:2.)

3 **GROUND FOR OBJECTION NO. 27:**

4 **Lack of foundation as to personal knowledge; improper legal conclusion;**  
5 **contradicted by the evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602;  
6 Fed. R. Evid. 701.

7 Mr. Girdner fails to establish any foundation whatsoever for the cited statistics.  
8 Mr. Girdner fails to establish foundation for his purported personal knowledge of the  
9 statistics and further fails to establish foundation, and fails to identify or provide  
10 source data, for the statistics themselves.

11 In addition, the referenced statistics are contradicted by OCSC business  
12 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary  
13 injunction and summary judgment papers, which data underlies OCSC’s calculations  
14 regarding when new civil unlimited complaints are made public relative to receipt.  
15 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
16 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa  
17 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
18 CNS argues that OCSC’s calculations are a mischaracterization because they are  
19 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
20 *See* ECF No. 83, Opp., 15:1-16:14.

21 In addition, Mr. Girdner’s assertion is rendered irrelevant as a matter of fact  
22 by CNS’s repeated admission in its evidentiary objections to OCSC’s summary  
23 judgment motion that, “Courthouse News Service is not requesting that the OCSC  
24 identify and promptly publish only ‘newsworthy’ complaints; it is asking that OCSC  
25 make all complaints available the same day they are submitted by the filer.” ECF  
26 No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on  
27 civil complex complaints is irrelevant and can only be intended to confuse or mislead  
28 the Court, and is therefore prejudicial.

1           Finally, Mr. Girdner's opinion as to what does or does not constitute "timely  
2 access" is an inadmissible legal conclusion.

3           **OBJECTION NO. 28:**

4           "I understand that Mr. Yamasaki distinguishes the Judge Otero's ruling in the  
5 Planet case by saying Ventura sees a much lower volume of complaints than does  
6 OCSC." (ECF No. 86, Girdner Decl. ¶ 138., 64:23-25.)

7           **GROUNDS FOR OBJECTION NO. 28:**

8           **Lack of foundation as to personal knowledge; inadmissible hearsay.** Fed.  
9 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

10           Mr. Girdner fails to establish foundation for his purported knowledge of Mr.  
11 Yamasaki's thoughts and opinions regarding the *Planet* case. And to the extent Mr.  
12 Girdner offers Mr. Yamasaki's out-of-court statements regarding the Planet case,  
13 offered for the truth of the matter asserted, that constitutes inadmissible hearsay.  
14 *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 ("If the evidentiary  
15 purpose is to prove a fact asserted, and such purpose is not approved under Evid. R.  
16 801(d), then the hearsay objection should be sustained.").

17           **OBJECTION NO. 29:**

18           "But a small coterie of clerks primarily in Southern California does not see it  
19 that way. Operating under the flag of new technology. they have blocked timely  
20 access by news reporters. Their determination to withhold press access has persisted  
21 in the face of two Ninth Circuit opinions and three district court opinions, one from  
22 a California district court, in large part because they are protected from any  
23 consequence by the financial backing of an opaque central bureaucracy which. in a  
24 demonstration of power and insularity, is using public funds to fight against-public  
25 access." (ECF No. 86, Girdner Decl. ¶ 142, 66:6-13.)

26           **GROUNDS FOR OBJECTION NO. 29:**

27           **Lack of foundation as to personal knowledge; inadmissible hearsay;**  
28           **improper legal conclusion.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid.

1 801, 802.

2 Mr. Girdner fails to establish foundation for his assertions regarding the  
3 purported views and “determination” of court clerks in Southern California. Mr.  
4 Girdner further fails to establish foundation for his assertion regarding their  
5 “financial backing.” He also fails to establish foundation for his assertion regarding  
6 the “bureaucracy[’s]” use of “public funds” and related intent.

7 To the extent Mr. Girdner purports to relay out-of-court statements of the  
8 clerks, for the truth of the matters asserted, that constitutes inadmissible hearsay.  
9 *See Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary*  
10 *purpose is to prove a fact asserted, and such purpose is not approved under Evid. R.*  
11 *801(d), then the hearsay objection should be sustained.”).*

12 Mr. Girdner also purports to state inadmissible legal conclusions regarding  
13 whether “timely access” has been or is being provided.

14 **II. OBJECTIONS TO DEPOSITION OF JOANNA MENDOZA**

16 **OBJECTION NO. 30:**

17 “I understand from my editor, William Girdner, that before I began covering  
18 OSC, the court provided access to newly filed civil unlimited complaints, which were  
19 at that time filed in paper form, by placing the complaints in a box, which members  
20 of the media would access in the records area at the end of each court day.” (ECF  
21 No. 88, Declaration of Joanna Mendoza (“Mendoza Decl.”) ¶ 5, 1:24-27.)

22 **GROUND FOR OBJECTION NO. 30:**

23 **Lack of foundation as to personal knowledge; inadmissible hearsay.** Fed.  
24 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 801, 802.

25 Ms. Mendoza fails to establish foundation for her personal knowledge  
26 regarding the matters stated; she purports merely to rely comments from Mr.  
27 Girdner. Accordingly, because Ms. Mendoza purports to offer Mr. Girdner’s out-  
28 of-court statements for the truth of the matters asserted, that also constitutes

1 inadmissible hearsay. *See* Fed. R. Evid. 801; 6 Handbook of Fed. Evid. At § 801:5  
2 (“If the evidentiary purpose is to prove a fact asserted, and such purpose is not  
3 approved under Evid. R. 801(d), then the hearsay objection should be sustained.”).

4 **OBJECTION NO. 31:**

5 “A court security guard in the complex building has informed me that I am not  
6 permitted to use the terminal for more than a short period of time because it is  
7 regularly used by members of the public. He also told me that court security officers  
8 clear the area where the terminal is located shortly after 4:00 each day.” (ECF No.  
9 88, Mendoza Decl. ¶ 11, 3:27-4:2.)

10 **GROUNDS FOR OBJECTION NO. 31:**

11 **Inadmissible hearsay; contradicted by evidence.** Fed. R. Evid. 801, 802.

12 Ms. Mendoza offers the security guard’s purported out-of-court statements  
13 for the truth of the matters asserted, constituting inadmissible hearsay. *See* Fed. R.  
14 Evid. 801; 6 Handbook of Fed. Evid. At § 801:5 (“If the evidentiary purpose is to  
15 prove a fact asserted, and such purpose is not approved under Evid. R. 801(d), then  
16 the hearsay objection should be sustained.”). Such statements are also contradicted  
17 by Mr. Wertheimer’s reply declaration. Wertheimer Decl. ISO Reply ¶¶ 5-7.

18 **OBJECTION NO. 32:**

19 “They are also the complaints that are withheld from public review for the  
20 greatest amount of time.” (ECF No. 88, Mendoza Decl. ¶ 13, 4:16-17.)

21 **GROUNDS FOR OBJECTION NO. 32:**

22 **Inadmissible hearsay; contradicted by evidence; irrelevant; prejudicial.**  
23 Fed. R. Evid. 801, 802; Fed. R. Evid. 401, 402, 403.

24 Ms. Mendoza fails to establish any foundation whatsoever for the cited  
25 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation  
26 for how she or her CNS team arrived at these numbers, fails to establish any  
27 foundation for her purported personal knowledge of the qualitative conclusions, and  
28 further fails to identify or provide source data for the calculation itself.

1        In addition, the referenced statistics are contradicted by OCSC business  
2 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary  
3 injunction and summary judgment papers, which data underlies OCSC’s calculations  
4 regarding when new civil unlimited complaints are made public relative to receipt.  
5 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
6 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa  
7 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
8 CNS argues that OCSC’s calculations are a mischaracterization because they are  
9 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
10 *See* ECF No. 83, Opp., 15:1-16:14.

11        Ms. Mendoza also fails to establish foundation or relevance for her focus on  
12 civil complex actions. Indeed, this assertion is rendered irrelevant as a matter of fact  
13 by CNS’s repeated admission in its evidentiary objections to OCSC’s summary  
14 judgment motion that, “Courthouse News Service is not requesting that the OCSC  
15 identify and promptly publish only ‘newsworthy’ complaints; it is asking that OCSC  
16 make all complaints available the same day they are submitted by the filer.” ECF  
17 No. 93, CNS Evid. Obj., 5:15-18, 8:18-21, 12:12-15. As a result, CNS’s focus on  
18 civil complex complaints is irrelevant and can only be intended to confuse or mislead  
19 the Court, and is therefore prejudicial.

20 **OBJECTION NO. 33:**

21        “For purposes of analyzing the OCSC Turnaround Reports to measure the  
22 actual delays experienced by CNS, I treated new civil complaints processed after 4  
23 p.m. on a given day as having been made available on the next day the court was  
24 open, because that would have been the first opportunity anyone would have to see  
25 the complaint without paying a viewing fee of between \$7.50 and \$40. For purposes  
26 of my analysis, I counted new civil complaints received on weekends and holidays  
27 as being received on the next court day, which I understand is consistent with court  
28 rules.” (ECF No. 88, Mendoza Decl. ¶ 24, 4:8-15.)

1 **GROUND FOR OBJECTION NO. 33:**

2 **Contradicted by evidence; incomplete, misleading, and prejudicial.** Fed.  
3 R. Evid. 403.

4 Ms. Mendoza's self-serving attempt to mischaracterize OCSC's "Turnaround  
5 Reports" by calculating "new civil complaints processed after 4 p.m. on a given day  
6 as having been made available on the next day the court was open," is contrary to the  
7 undisputed evidence (the "Turnaround Reports" themselves) and ignores that all  
8 complaints made available on the public docket are available 24 hours a day through  
9 the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88, Mendoza Decl. ¶  
10 46. That Ms. Mendoza apparently prefers not to access complaints that way is neither  
11 relevant nor does it constitute good cause to mischaracterize the results to make it  
12 seem like complaints are being made available later than they really are.

13 Significantly, CNS does not contest the data contained in the "Turnaround  
14 Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No.  
15 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-  
16 12. While CNS argues that OCSC's calculations are a mischaracterization because  
17 they are based on business hours, CNS does not dispute the accuracy of the actual  
18 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these  
19 numbers with false criteria can only be intended confuse and mislead the Court, and  
20 is therefore prejudicial.

21 **OBJECTION NO. 34:**

22 "The results of my analysis of the OCSC Turnaround Reports for all new civil  
23 complaints filed between Jan. 1, 2017 and Oct. 18, 2017 is reflected in the attached  
24 Exhibit 5. This summary in Exhibit 5 reflects that the same data OCSC used to  
25 calculate its assertion that 95.97% of unlimited civil complaints filed between Jan. 1,  
26 2017 to Oct. 18, 2017 were "published" within eight "business hours," shows that I  
27 was not able to see more than half (56.9%) of them on the day the court received  
28 them for filing. OCSC withheld 45.8% of the civil unlimited cases for one day, and

1 withheld another 11.1% for two to thirteen days.” (ECF No. 88, Mendoza Decl. ¶ 25,  
2 8:16-23.)

3 **GROUND FOR OBJECTION NO. 34:**

4 **Lack of foundation as to personal knowledge; contradicted by evidence;**  
5 **incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.  
6 701; Fed. R. Evid. 403.

7 Ms. Mendoza fails to establish foundation for the cited statistics and further  
8 fails to provide her calculations.

9 In addition, Ms. Mendoza’s self-serving attempt to mischaracterize OCSC’s  
10 “Turnaround Reports” by calculating “new civil complaints processed after 4 p.m.  
11 on a given day as having been made available on the next day the court was open,”  
12 is contrary to the undisputed evidence (the “Turnaround Reports” themselves) and  
13 ignores that all complaints made available on the public docket are available to the  
14 public 24 hours a day through the internet, a fact that Ms. Mendoza concedes. *See*  
15 ECF No. 88, Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access  
16 complaints that way is neither relevant nor does it constitute good cause to  
17 mischaracterize the results to make it seem like complaints are being made available  
18 later than they really are.

19 Significantly, CNS does not contest the data contained in the “Turnaround  
20 Reports,” and does not dispute the accuracy of OCSC’s calculations. *See* ECF No.  
21 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-  
22 12. While CNS argues that OCSC’s calculations are a mischaracterization because  
23 they are based on business hours, CNS does not dispute the accuracy of the actual  
24 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these  
25 numbers with false criteria can only be intended to confuse and mislead the Court,  
26 and is therefore prejudicial.

27 **OBJECTION NO. 35:**

28 “Also reflected in Exhibit 5 is the fact that the OCSC Turnaround Reports

1 show that access in some weeks was especially bad. Of the civil unlimited complaints  
2 filed the week of July 17 - 23, for example, 91.6% were withheld until at least the  
3 following court day after they were received for filing.” (ECF No. 88, Mendoza Decl.  
4 ¶ 26, 8:24-27.)

5 **GROUND FOR OBJECTION NO. 35:**

6 **Lack of foundation as to personal knowledge; contradicted by evidence;  
7 incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.  
8 701; Fed. R. Evid. 403.

9 Ms. Mendoza fails to establish any foundation whatsoever for the cited  
10 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation  
11 for how she or her CNS team arrived at these numbers, fails to establish any  
12 foundation for her purported personal knowledge of the qualitative conclusions, and  
13 further fails to identify or provide source data for the calculation itself.

14 In addition, Ms. Mendoza’s self-serving attempt to mischaracterize OCSC’s  
15 “Turnaround Reports” by calculating “new civil complaints processed after 4 p.m.  
16 on a given day as having been made available on the next day the court was open,”  
17 is contrary to the undisputed evidence (the “Turnaround Reports” themselves) and  
18 ignores that all complaints made available on the public docket are available 24 hours  
19 a day through the internet, a fact that Ms. Mendoza concedes. *See* ECF No. 88,  
20 Mendoza Decl. ¶ 46. That Ms. Mendoza apparently prefers not to access complaints  
21 that way is neither relevant nor does it constitute good cause to mischaracterize the  
22 results to make it seem like complaints are being made available later than they really  
23 are.

24 Significantly, CNS does not contest the data contained in the “Turnaround  
25 Reports,” and does not dispute the accuracy of OCSC’s calculations. *See* ECF No.  
26 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-  
27 12. While CNS argues that OCSC’s calculations are a mischaracterization because  
28 they are based on business hours, CNS does not dispute the accuracy of the actual

1 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these  
2 numbers with false criteria can only be intended to confuse and mislead the Court,  
3 and is therefore prejudicial.

4 **OBJECTION NO. 36:**

5 ECF No. 88, Exhibit 5 to Mendoza Decl. (pp. 96-99).

6 **GROUND FOR OBJECTION NO. 36:**

7 **Lack of foundation as to personal knowledge; contradicted by evidence;**  
8 **incomplete, misleading, and prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid.  
9 701; Fed. R. Evid. 403.

10 Ms. Mendoza fails to establish any foundation whatsoever for the cited  
11 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation  
12 for how she or her CNS team arrived at these numbers, fails to establish any  
13 foundation for her purported personal knowledge of the qualitative conclusions, and  
14 further fails to identify or provide source data for the calculation itself.

15 Significantly, CNS does not contest the data contained in the "Turnaround  
16 Reports," and does not dispute the accuracy of OCSC's calculations. *See* ECF No.  
17 75-2, Ochoa Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-  
18 12. While CNS argues that OCSC's calculations are a mischaracterization because  
19 they are based on business hours, CNS does not dispute the accuracy of the actual  
20 numbers. *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these  
21 numbers with false criteria can only be intended to confuse and mislead the Court,  
22 and is therefore prejudicial.

23 **OBJECTION NO. 37:**

24 "Through an analysis of OCSC's data for January 1, 2017 -October 18, 2017,  
25 supplemented by information from the Register of Actions and payment receipts for  
26 cases filed from October 19, 2017 - December 19, 2017, I noted the following  
27 elements associated with the filing, processing and public availability of a complex  
28 complaint: ( 1) filing date; (2) case number with the complex suffix CXC; (3) date

1 and time on which the complaint was received; (4) date and time on which the  
2 complex complaint was processed (from October 19 through December 29, time of  
3 processing is based on payment receipts and is unavailable for complaints filed with  
4 fee waivers, which are listed in the summary with a date and an asterisk); and (5)  
5 delay between when the complaint was received and the processing time, which  
6 serves as a reliable indicator of when the complaint first becomes available for  
7 viewing. In preparing this summary, I excluded cases with a "CXC" designation that  
8 were assigned to Judge Bauer because he is a non-complex judge and it appears those  
9 cases received the CXC suffix only because Judge Bauer's courtroom is located in  
10 the complex building. The summary also excludes a small number of cases that were  
11 misfiled as complex, but are not complex cases per the Register of Actions." (ECF  
12 No. 88, Mendoza Decl. ¶ 29, 9:18-10:5.)

13 **GROUND FOR OBJECTION NO. 37:**

14       **Lack of foundation as to personal knowledge; irrelevant; prejudicial.** Fed.  
15 R. Evid. 601, 602; Fed. R. Evid. 701; Fed. R. Evid. 401, 402, 403.

16       Ms. Mendoza fails to establish foundation for her assertions regarding (1)  
17 Judge Bauer's supposed assignment; (2) "cases that were misfiled as complex"; and  
18 (3) the additional information with which she purportedly supplemented OCSC's  
19 "Turnaround Reports," which information she also fails to identify or provide.

20       In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant  
21 as a matter of fact by CNS's repeated admission in its evidentiary objections to  
22 OCSC's summary judgment motion that, "Courthouse News Service is not  
23 requesting that the OCSC identify and promptly publish only 'newsworthy' or  
24 complex complaints; it is asking that OCSC make all complaints available the same  
25 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
26 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant  
27 and can only be intended to confuse or mislead the Court, and is therefore prejudicial.

28

1        **OBJECTION NO. 38:**

2            “Exhibit 6 shows that on the day they were filed I was not able to see more  
3 than three-quarters (78%) of the 488 complex civil unlimited complaints filed  
4 between January 1, 2017 and December 29, 2017. The court withheld more than one  
5 third (39.5%) of the complex civil unlimited cases for one day. The court withheld  
6 more- than another third (38.5%) for two to seven days. The average delay for all  
7 these complex cases was 1.7 days beyond the day they were received by OCSC.”  
8 (ECF No. 88, Mendoza Decl. ¶ 31, 10:11-16.)

9        **GROUND FOR OBJECTION NO. 38:**

10            **Lack of foundation as to personal knowledge; contradicted by the**  
11 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
12 R. Evid. 401, 402, 403.

13            Ms. Mendoza fails to establish foundation for her assertions regarding (1)  
14 Judge Bauer’s supposed assignment; (2) “cases that were misfiled as complex”; and  
15 (3) the additional information with which she purported supplemented OCSC’s  
16 “Turnaround Reports”, which information she also fails to identify or provide.

17            In addition, the referenced statistics are contradicted by OCSC business  
18 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary  
19 injunction and summary judgment papers, which data underlies OCSC’s calculations  
20 regarding when new civil unlimited complaints are made public relative to receipt.  
21 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
22 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa  
23 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
24 CNS argues that OCSC’s calculations are a mischaracterization because they are  
25 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
26 *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these numbers with  
27 false criteria can only be intended to confuse and mislead the Court, and is therefore  
28 prejudicial.

1           In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant  
2 as a matter of fact by CNS's repeated admission in its evidentiary objections to  
3 OCSC's summary judgment motion that, "Courthouse News Service is not  
4 requesting that the OCSC identify and promptly publish only 'newsworthy' or  
5 complex complaints; it is asking that OCSC make all complaints available the same  
6 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
7 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant  
8 and can only be intended to confuse or mislead the Court, and is therefore also  
9 prejudicial.

10           **OBJECTION NO. 39:**

11           ECF No. 88, Exhibit 6 to Mendoza Decl. (pp. 100-116).

12           **GROUND FOR OBJECTION NO. 39:**

13           **Lack of foundation as to personal knowledge; contradicted by the**  
14 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
15 R. Evid. 401, 402, 403.

16           Ms. Mendoza fails to establish any foundation whatsoever for the cited  
17 calculation or conclusion. Ms. Mendoza fails to establish any analytical foundation  
18 for how she or her CNS team arrived at these numbers, fails to establish any  
19 foundation for her purported personal knowledge of the qualitative conclusions, and  
20 further fails to identify or provide source data for the calculation itself.

21           Further, the referenced statistics are contradicted by OCSC business records,  
22 specifically the "Turnaround Reports" submitted with OCSC's preliminary  
23 injunction and summary judgment papers, which data underlies OCSC's calculations  
24 regarding when new civil unlimited complaints are made public relative to receipt.  
25 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"  
26 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa  
27 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
28 CNS argues that OCSC's calculations are a mischaracterization because they are

1 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
2 See ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers  
3 with false criteria can only be intended to confuse and mislead the Court, and is  
4 therefore prejudicial.

5 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant  
6 as a matter of fact by CNS's repeated admission in its evidentiary objections to  
7 OCSC's summary judgment motion that, "Courthouse News Service is not  
8 requesting that the OCSC identify and promptly publish only 'newsworthy or  
9 complex complaints; it is asking that OCSC make all complaints available the same  
10 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
11 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant  
12 and can only be intended to confuse or mislead the Court, and is therefore also  
13 prejudicial.

14 **OBJECTION NO. 40:**

15 "Within the last group of complaints that were delayed from two to seven days,  
16 the court withheld 29 .3% of those complex civil unlimited complaints for three days  
17 or more, and it withheld 13.7% of the complex civil unlimited complaints for four  
18 days or more. The average delay for the complex civil unlimited cases falling within  
19 this group was 3.4 days beyond the day they were received by OCSC." (ECF No. 88,  
20 Mendoza Decl. ¶ 32. 10:17-21.)

21 **GROUND FOR OBJECTION NO. 40:**

22 **Lack of foundation as to personal knowledge; contradicted by the**  
23 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
24 R. Evid. 401, 402, 403.

25 Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge  
26 Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the  
27 additional information with which she purported supplemented OCSC's  
28 "Turnaround Reports", which information she also fails to identify or provide.

1        In addition, the referenced statistics are contradicted by OCSC business  
2 records, specifically the “Turnaround Reports” submitted with OCSC’s preliminary  
3 injunction and summary judgment papers, which data underlies OCSC’s calculations  
4 regarding when new civil unlimited complaints are made public relative to receipt.  
5 Significantly, CNS does not contest the data contained in the “Turnaround Reports,”  
6 and does not dispute the accuracy of OCSC’s calculations. *See* ECF No. 75-2, Ochoa  
7 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
8 CNS argues that OCSC’s calculations are a mischaracterization because they are  
9 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
10 *See* ECF No. 83, Opp., 15:1-16:14. CNS’s attempt to re-calculate these numbers  
11 with false criteria can only be intended to confuse and mislead the Court, and is  
12 therefore prejudicial.

13        In addition, Ms. Mendoza’s focus on civil complex cases is rendered irrelevant  
14 as a matter of fact by CNS’s repeated admission in its evidentiary objections to  
15 OCSC’s summary judgment motion that, “Courthouse News Service is not  
16 requesting that the OCSC identify and promptly publish only “newsworthy” or  
17 complex complaints; it is asking that OCSC make all complaints available the same  
18 day they are submitted by the filer.” ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
19 12:12-15. As a result, Ms. Mendoza’s focus on civil complex complaints is irrelevant  
20 and can only be intended to confuse or mislead the Court, and is therefore also  
21 prejudicial.

22 **OBJECTION NO. 41:**

23        “The unavailability of the complex civil complaints for between one to seven  
24 days after filing has...” (ECF No. 88, Mendoza Decl. ¶ 33, 10:22-23.)

25 **GROUND FOR OBJECTION NO. 41:**

26        **Lack of foundation as to personal knowledge; contradicted by the**  
27 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
28 R. Evid. 401, 402, 403.

1 Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge  
2 Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the  
3 additional information with which she purportedly supplemented OCSC's  
4 "Turnaround Reports", which information she also fails to identify or provide.

5 In addition, the referenced statistics are contradicted by OCSC business  
6 records, specifically the "Turnaround Reports" submitted with OCSC's preliminary  
7 injunction and summary judgment papers, which data underlies OCSC's calculations  
8 regarding when new civil unlimited complaints are made public relative to receipt.  
9 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"  
10 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa  
11 Decl. ¶¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While  
12 CNS argues that OCSC's calculations are a mischaracterization because they are  
13 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
14 *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers  
15 with false criteria can only be intended to confuse and mislead the Court, and is  
16 therefore prejudicial.

17 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant  
18 as a matter of fact by CNS's repeated admission in its evidentiary objections to  
19 OCSC's summary judgment motion that, "Courthouse News Service is not  
20 requesting that the OCSC identify and promptly publish only 'newsworthy or  
21 complex complaints; it is asking that OCSC make all complaints available the same  
22 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
23 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant  
24 and can only be intended to confuse or mislead the Court, and is therefore also  
25 prejudicial.

26 **OBJECTION NO. 42:**

27 "The delays that naturally result from OCSC's practice of withholding  
28 complaints until after processing..." (ECF No. 88, Mendoza Decl. ¶ 45, 14:15-16.)

1 **GROUND FOR OBJECTION NO. 42:**

2 **Lack of foundation as to personal knowledge; contradicted by the**  
3 **evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701.

4 Ms. Mendoza fails to establish foundation for her assertion of OCSC's  
5 purported "practice of withholding complaints until after processing." Moreover,  
6 this assertion is contradicted by the declarations of Sara Ochoa and Debbie Kruse  
7 submitted with OCSC's moving papers, both of which make clear that OCSC's LPSs  
8 review all civil unlimited complaints in the order received and as quickly as possible.  
9 *See* ECF No. 75-2, Ochoa Decl. ¶¶ 25-27; ECF No. 75-3, Kruse Decl. ¶¶ 8-10. OCSC  
10 does not withhold anything.

11 **OBJECTION NO. 43:**

12 "...for the complex cases in 2017, took up to seven days." (ECF No. 88,  
13 Mendoza Decl. ¶ 46, 15:4-5.)

14 **GROUND FOR OBJECTION NO. 43:**

15 **Lack of foundation as to personal knowledge; contradicted by the**  
16 **evidence; irrelevant; prejudicial.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701; Fed.  
17 R. Evid. 401, 402, 403.

18 Ms. Mendoza fails to establish foundation for her assertions regarding 1) Judge  
19 Bauer's supposed assignment; 2) "cases that were misfiled as complex;" and 3) the  
20 additional information with which she purportedly supplemented OCSC's  
21 "Turnaround Reports", which information she also fails to identify or provide.

22 In addition, the referenced statistics are contradicted by OCSC business  
23 records, specifically the "Turnaround Reports" submitted with OCSC's preliminary  
24 injunction and summary judgment papers, which data underlies OCSC's calculations  
25 regarding when new civil unlimited complaints are made public relative to receipt.  
26 Significantly, CNS does not contest the data contained in the "Turnaround Reports,"  
27 and does not dispute the accuracy of OCSC's calculations. *See* ECF No. 75-2, Ochoa  
28 Decl. ¶ 28-29, Ex. C (pp. 20-30); ECF No. 75-3, Kruse Decl. ¶¶ 11-12. While

1 CNS argues that OCSC's calculations are a mischaracterization because they are  
2 based on business hours, CNS does not dispute the accuracy of the actual numbers.  
3 *See* ECF No. 83, Opp., 15:1-16:14. CNS's attempt to re-calculate these numbers  
4 with false criteria can only be intended to confuse and mislead the Court, and is  
5 therefore prejudicial.

6 In addition, Ms. Mendoza's focus on civil complex cases is rendered irrelevant  
7 as a matter of fact by CNS's repeated admission in its evidentiary objections to  
8 OCSC's summary judgment motion that, "Courthouse News Service is not  
9 requesting that the OCSC identify and promptly publish only 'newsworthy' or  
10 complex complaints; it is asking that OCSC make all complaints available the same  
11 day they are submitted by the filer." ECF No. 93, CNS Evid. Obj., 5:15-18, 8:18-21,  
12 12:12-15. As a result, Ms. Mendoza's focus on civil complex complaints is irrelevant  
13 and can only be intended to confuse or mislead the Court, and is therefore also  
14 prejudicial.

15 **OBJECTION NO. 44:**

16 "OCSC provides *Orange County Register* reporters with a dedicated working  
17 room across the hall from the Records Area." (ECF No. 88, Mendoza Decl. ¶ 47,  
18 15:6-7.)

19 **GROUND FOR OBJECTION NO. 44:**

20 **Lack of foundation as to personal knowledge; contradicted by the  
21 evidence.** Fed. R. Evid. 601, 602; Fed. R. Evid. 701..

22 Ms. Mendoza fails to establish foundation for her purported knowledge  
23 regarding whether and how OCSC supposedly "provides Orange County Register  
24 reporters with a dedicated working room across the hall from the Records Area."  
25 This statement is also directly contradicted by the reply declaration of Jeff  
26 Wertheimer in which Mr. Wertheimer describes how the State of California owns the  
27 building that houses OCSC's Central Justice Center, and how the State – not OCSC  
28 – leases space in the building to each of the tenants in the building, including the

1 Orange County Register. Wertheimer Decl. ISO Reply ¶ 2. This statement is further  
2 contradicted by David Yamasaki's deposition testimony to the same effect.  
3 Declaration Cary D. Sullivan In Support of Reply ("Sullivan Decl. ISO Reply") ¶ 7;  
4 Ex. E, Yamasaki Depo., 114:16-21.

5 **OBJECTION NO. 45:**

6 "..."understand from *Register* reporters that they are permitted to work in that  
7 room as late as they wish after the court closes to the general public at 5 p.m." (ECF  
8 No. 88, Mendoza Decl. ¶ 47, 15:8-10.)

9 **GROUNDS FOR OBJECTION NO. 45:**

10 **Inadmissible hearsay; irrelevant.** Fed. R. Evid. 801, 802; Fed. R. Evid. 401,  
11 402.

12 Ms. Mendoza purports to relay comments from Orange County Register  
13 reporters regarding whether they are permitted to work late in the room that The  
14 Register leases from the State of California. Because the comments are being offered  
15 for the truth of the matter asserted, they constitute inadmissible hearsay.

16 In addition, because the State of California owns the building that houses  
17 OCSC's Central Justice Center, and because the State – not OCSC – leases space in  
18 the building to each of the tenants in the building, including the Orange County  
19 Register, Wertheimer Decl. ISO Reply ¶ 2; Sullivan Decl. ISO Reply ¶ 7, Ex. E,  
20 Yamasaki Depo., 114:16-21, whether and how The Register's reporters use The  
21 Register's privately leased space is irrelevant as a matter of fact.

22 **III. OBJECTIONS TO DEPOSITION OF CRAIG ROSENBERG, Ph.D.**

23 **OBJECTION NO. 46:**

24 "Based on my review of that material and my experience, I am of the opinion  
25 that the method that the Orange County Superior Court ("OCSC") currently uses to  
26 secure the confidentiality of complaints that are conditionally sealed (i.e., filed with  
27 a motion or a request to seal) or required to be kept confidential by statute is not

1 optimal and could be improved quickly and easily by OCSC programmers, while at  
2 the same time allowing the public to have access to non-confidential complaints as  
3 soon as the complaints are electronically received by OCSC and before manual clerk  
4 review.” (ECF No. 89, Declaration of Craig Rosenberg (“Rosenberg Decl.”) ¶ 5,  
5 3:10-17.)

6 **GROUND FOR OBJECTION NO. 46:**

7 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
8 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

9 Dr. Rosenberg fails to establish foundation for his purported knowledge of (1)  
10 OCSC’s CCMS; (2) “the method that [OCSC] currently uses to secure the  
11 confidentiality of complaints that are conditionally sealed ... or required to be kept  
12 confidential by statute”; and (3) whether and how CCMS “could be improved quickly  
13 and easily by OCSC programmers.” Dr. Rosenberg does not profess to have any  
14 knowledge of or familiarity with CCMS – because he has none – and thus cannot  
15 know its technological capabilities, functionality, and/or possibilities.

16 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg’s CV  
17 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human  
18 Factors,” and describes himself as “[a]n accomplished human factors engineer ...  
19 specializing in analysis and design of mobile computing devices, complex systems,  
20 user centered design, information architecture, user experience....” ECF No. 89,  
21 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
22 background or expertise in computer programming generally or in the programming  
23 or creation of court case management systems specifically.

24 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities  
25 and functionality, nor is he qualified to opine as to what may or may not be possible  
26 with respect to re-programming the system to add new features or functions. *See*  
27 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *see also Kumho Tire*  
28 *Co., Ltd. v. Carmichael*, 526 US 137 (1999); *Avila v. Willits Envtl. Remediation Tr.*,

1 633 F.3d 828, 839 (9th Cir. 2011) (courts properly exclude expert testimony where  
2 expert offers opinions outside area of expertise).<sup>1</sup>

3 Furthermore, Dr. Rosenberg’s opinions on these matters should be excluded  
4 because they are not “reliable,” as required for the admission of scientific expert  
5 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
6 personal knowledge of OCSC’s computer systems or that his opinions are based on  
7 scientific foundations. *See Morrison v. Quest Diagnostics Inc.*, 2016 WL 3457725,  
8 at \*3–4 (D. Nev. June 23, 2016) (reliability may be shown by personal knowledge or  
9 scientific basis). And “[a]n opinion based on … unsubstantiated and undocumented  
10 information is the antithesis of the scientifically reliable expert opinion admissible  
11 under *Daubert* and Rule 702.” *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th  
12 Cir. 1998). Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning  
13 underlying his opinions. That is fatal. An expert must, at minimum, provide the  
14 basis for his scientific conclusions. *See, e.g., Diviero v. Uniroyal Goodrich Tire Co.*,  
15 114 F.3d 851, 853 (9th Cir. 1997). If he does not, courts rightly disregard the  
16 opinions offered as “unsubstantiated and subjective, and therefore unreliable and  
17 inadmissible.” *Id.* That is the proper course here.

18 Finally, Dr. Rosenberg’s opinions on these matters should be excluded because  
19 he failed to provide the necessary written disclosures under Federal Rule of Civil  
20 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have  
21 applied them when an expert’s testimony is offered to the court in connection with  
22 summary judgment motions, reasoning that in such situations, the expert has ‘entered  
23 the judicial arena.’” *S. Yuba River Citizens League v. Nat’l Marine Fisheries Serv.*,  
24 257 F.R.D. 607, 611 (E.D. Cal. 2009). Here, Dr. Rosenberg has not disclosed what  
25 Rule 26 requires, which includes “the facts or data considered by the witness in

---

26  
27 <sup>1</sup> The current summary judgment briefing schedule does not allow sufficient  
28 time for Yamasaki to formally notice a motion to exclude Dr. Rosenberg’s  
testimony under *Daubert* prior to the scheduled hearing. Yamasaki reserves the  
right to notice such a motion at a future date.

1 forming” his opinion; a list of prior cases in which the witness has served as an expert  
2 witness; and the witness’s compensation. Fed. R. Civ. P. 26(a)(2)(B). As already  
3 explained, Dr. Rosenberg’s declaration provides no detail regarding the facts or data  
4 he considered in forming his various conclusions. And a report that describes “none  
5 of the underlying data or observations” relied on by the expert is deficient. *Taser*  
6 *Int’l, Inc. v. Bestex Co.*, 2007 WL 2947564, at \*8-9 (C.D. Cal. Feb. 9, 2007). Because  
7 Dr. Rosenberg did not disclose what he was required to under Rule 26, Yamasaki  
8 was never given the opportunity to probe the basis of his views, including by  
9 deposition. Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9  
10 (excluding expert testimony where the defendant was rendered unable to effectively  
11 respond to testimony because of party’s failure to disclose); *Colony Holdings, Inc. v.*  
12 *Texaco Ref. & Mktg., Inc.*, 2001 WL 1398403, at \*6 (C.D. Cal. Oct. 29, 2001)  
13 (excluding testimony because expert “was not disclosed as an expert witness, no  
14 expert report was prepared and produced, and Defendants did not have the  
15 opportunity to depose and examine [the expert] regarding the reliability of his  
16 opinions”).

17 **OBJECTION NO. 47:**

18 “Given these facts, it would be more efficient and less prone to errors for the  
19 Court to modify its e-filing system so that the e-filers themselves would be required  
20 to check a single box or select one of two radio buttons (that would be functionally  
21 equivalent to the check box) to indicate that the filing contains confidential  
22 information.” (ECF No. 89, Rosenberg Decl. ¶ 7, 4:1-5.)

23 **GROUND FOR OBJECTION NO. 47:**

24 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
25 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

26 Dr. Rosenberg fails to establish foundation for his purported knowledge of (1)  
27 OCSC’s CCMS; (2) the functionality of CCMS with respect to designation of  
28 confidential complaints or complaints that are to be sealed; and (3) whether and how

1 CCMS could be re-programmed or upgraded by OCSC programmers. Dr. Rosenberg  
2 does not profess to have any knowledge of or familiarity with CCMS – because he  
3 has none – and thus cannot know its technological capabilities, functionality, and/or  
4 possibilities.

5 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV  
6 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human  
7 Factors," and describes himself as "[a]n accomplished human factors engineer ...  
8 specializing in analysis and design of mobile computing devices, complex systems,  
9 user centered design, information architecture, user experience...." ECF No. 89,  
10 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
11 background or expertise in computer programming generally or in the programming  
12 or creation of court case management systems specifically.

13 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities  
14 and functionality, nor is he qualified to opine as to what may or may not be possible  
15 with respect to re-programming the system to add new features or functions. *See*  
16 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839  
17 (courts properly exclude expert testimony where expert offers opinions outside area  
18 of expertise).

19 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded  
20 because they are not "reliable," as required for the admission of scientific expert  
21 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
22 personal knowledge of OCSC's computer systems or that his opinions are based on  
23 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
24 be shown by personal knowledge or scientific basis). And "[a]n opinion based on ...  
25 unsubstantiated and undocumented information is the antithesis of the scientifically  
26 reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d  
27 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning  
28 underlying his opinions. That is fatal. An expert must, at minimum, provide the

1 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does  
2 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,  
3 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

4 Dr. Rosenberg’s opinions on these matters should also be excluded because he  
5 failed to provide the necessary written disclosures under Federal Rule of Civil  
6 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have  
7 applied them when an expert’s testimony is offered to the court in connection with  
8 summary judgment motions, reasoning that in such situations, the expert has ‘entered  
9 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.  
10 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data  
11 considered by the witness in forming” his opinion; a list of prior cases in which the  
12 witness has served as an expert witness; and the witness’s compensation. Fed. R.  
13 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no  
14 detail regarding the facts or data he considered in forming his various conclusions.  
15 And a report that describes “none of the underlying data or observations” relied on  
16 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at \*8-9. Because Dr.  
17 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was  
18 never given the opportunity to probe the basis of his views, including by deposition.  
19 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9 (excluding  
20 expert testimony where the defendant was rendered unable to effectively respond to  
21 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL  
22 1398403, at \*6 (excluding testimony because expert “was not disclosed as an expert  
23 witness, no expert report was prepared and produced, and Defendants did not have  
24 the opportunity to depose and examine [the expert] regarding the reliability of his  
25 opinions”).

26 In addition, Dr. Rosenberg’s assertion that a check-box or push-button feature  
27 would be “more efficient and less prone to errors” is based on a demonstrably false  
28 premise – that filers always comply with filing requirements regarding confidential

1 complaints. OCSC has already establishes numerous examples where filers  
2 disregarded an express requirement to note confidential treatment on the caption page  
3 of a complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles  
4 with the exact number of these examples, CNS concedes that 13 confidential  
5 complaints would have been made public but for LPS review. ECF No. 84, CNS  
6 Response to OCSC SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes  
7 the dispositive fact that, but for LPS review, more than a dozen confidential  
8 complaints would have been made public. Consequently, because we know that  
9 leaving the confidentiality determination to filers is not a failsafe approach, LPS  
10 review would still be required for the Court to fulfill its obligation to do all it can to  
11 ensure that complaints that are required by law to be kept confidential are not  
12 accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-  
13 2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc.  
14 Code § 340.1(m); *Mao’s Kitchen, Inc. v. Mundy*, 209 Cal. App. 4th 132, 149 (2012);  
15 Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶  
16 30; ECF No. 75-3, Kruse Decl. ¶ 13.

17 **OBJECTION NO. 48:**

18 “OCSC's current procedure of relying on the LPS to review a text box for e-  
19 filer comments and the face page of the complaint amplifies the potential for human  
20 error. First, OCSC's current system requires the e-filer to remember to request  
21 confidentiality where appropriate (either explicitly, or by referencing one of several  
22 categories of confidential complaints by name or code section) rather than explicitly  
23 requiring the e-filer to address the question of confidentiality. Second, an e-filer  
24 entering comments into a free-form text box might not use the key words or code  
25 section the LPS looks for to identify confidentiality. Third, even if the e-filer uses  
26 these key terms, the LPS can overlook them despite their best diligence. At the same  
27 time, the LPS review does nothing to improve the appropriate selection of a security  
28 level because the reviewing LPS relies on the e-filer to designate a complaint as

1 "confidential," "secret," or conditionally "sealed" by using those words or referencing  
2 one of several categories of confidential complaints by name or code section in the  
3 comments box or on the complaint's face page." (ECF No. 89, Rosenberg Decl. ¶ 8,  
4 4:23-5:9.)

5 **GROUNDΣ FOR OBJECTION NO. 48:**

6 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
7 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

8 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)  
9 OCSC's CCMS; and 2) the functionality of CCMS with respect to designation of  
10 confidential complaints or complaints that are to be sealed. Dr. Rosenberg does not  
11 profess to have any knowledge of or familiarity with CCMS – because he has none  
12 – and thus cannot know its technological capabilities, functionality, and/or  
13 possibilities.

14 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV  
15 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human  
16 Factors," and describes himself as "[a]n accomplished human factors engineer ...  
17 specializing in analysis and design of mobile computing devices, complex systems,  
18 user centered design, information architecture, user experience...." ECF No. 89,  
19 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
20 background or expertise in computer programming generally or in the programming  
21 or creation of court case management systems specifically.

22 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities  
23 and functionality. *See Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137;  
24 *Avila*, 633 F.3d at 839 (courts properly exclude expert testimony where expert offers  
25 opinions outside area of expertise).

26 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded  
27 because they are not "reliable," as required for the admission of scientific expert  
28 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate

1 personal knowledge of OCSC’s computer systems or that his opinions are based on  
2 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
3 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...  
4 unsubstantiated and undocumented information is the antithesis of the scientifically  
5 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d  
6 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning  
7 underlying his opinions. That is fatal. An expert must, at minimum, provide the  
8 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does  
9 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,  
10 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

11 Finally, Dr. Rosenberg’s opinions on these matters should be excluded because  
12 he failed to provide the necessary written disclosures under Federal Rule of Civil  
13 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have  
14 applied them when an expert’s testimony is offered to the court in connection with  
15 summary judgment motions, reasoning that in such situations, the expert has ‘entered  
16 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.  
17 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data  
18 considered by the witness in forming” his opinion; a list of prior cases in which the  
19 witness has served as an expert witness; and the witness’s compensation. Fed. R.  
20 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no  
21 detail regarding the facts or data he considered in forming his various conclusions.  
22 And a report that describes “none of the underlying data or observations” relied on  
23 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at \*8-9. Because Dr.  
24 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was  
25 never given the opportunity to probe the basis of his views, including by deposition.  
26 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9 (excluding  
27 expert testimony where the defendant was rendered unable to effectively respond to  
28 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL

1 1398403, at \*6 (excluding testimony because expert “was not disclosed as an expert  
2 witness, no expert report was prepared and produced, and Defendants did not have  
3 the opportunity to depose and examine [the expert] regarding the reliability of his  
4 opinions”).

5 **OBJECTION NO. 49:**

6 “Additionally, providing the security level check box or radio buttons at the  
7 user interface is a relatively simple and inexpensive task. I have read portions of  
8 Mr. Yamasaki's deposition where he acknowledges that such a solution is clearly  
9 possible and within the capacity of OCSC's Court Technology services department,  
10 which is evidently currently working to upgrade OCSC's case management  
11 system.” (ECF No. 89, Rosenberg Decl. ¶ 9, 5:10-14.)

12 **GROUNDS FOR OBJECTION NO. 49:**

13 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
14 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

15 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)  
16 OCSC's CCMS; 2) the functionality of CCMS with respect to designation of  
17 confidential complaints or complaints that are to be sealed; and 3) whether and how  
18 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.  
19 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –  
20 because he has none – and thus cannot know its technological capabilities,  
21 functionality, and/or possibilities.

22 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV  
23 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human  
24 Factors,” and describes himself as “[a]n accomplished human factors engineer ...  
25 specializing in analysis and design of mobile computing devices, complex systems,  
26 user centered design, information architecture, user experience....” ECF No. 89,  
27 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
28 background or expertise in computer programming generally or in the programming

1 or creation of court case management systems specifically.

2 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities  
3 and functionality, nor is he qualified to opine as to what may or may not be possible  
4 with respect to re-programming the system to add new features or functions. *See*  
5 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839  
6 (courts properly exclude expert testimony where expert offers opinions outside area  
7 of expertise).

8 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded  
9 because they are not "reliable," as required for the admission of scientific expert  
10 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
11 personal knowledge of OCSC's computer systems or that his opinions are based on  
12 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
13 be shown by personal knowledge or scientific basis). And "[a]n opinion based  
14 on ... unsubstantiated and undocumented information is the antithesis of the  
15 scientifically reliable expert opinion admissible under *Daubert* and Rule 702."  
16 *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of  
17 the reasoning underlying his opinions. That is fatal. An expert must, at minimum,  
18 provide the basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853.  
19 If he does not, courts rightly disregard the opinions offered as "unsubstantiated and  
20 subjective, and therefore unreliable and inadmissible." *Id.* That is the proper  
21 course here.

22 Dr. Rosenberg's opinions on these matters should also be excluded because he  
23 failed to provide the necessary written disclosures under Federal Rule of Civil  
24 Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have  
25 applied them when an expert's testimony is offered to the court in connection with  
26 summary judgment motions, reasoning that in such situations, the expert has 'entered  
27 the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.  
28 Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data

1 considered by the witness in forming” his opinion; a list of prior cases in which the  
2 witness has served as an expert witness; and the witness’s compensation. Fed. R.  
3 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no  
4 detail regarding the facts or data he considered in forming his various conclusions.  
5 And a report that describes “none of the underlying data or observations” relied on  
6 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at \*8-9. Because Dr.  
7 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was  
8 never given the opportunity to probe the basis of his views, including by deposition.  
9 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9 (excluding  
10 expert testimony where the defendant was rendered unable to effectively respond to  
11 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL  
12 1398403, at \*6 (excluding testimony because expert “was not disclosed as an expert  
13 witness, no expert report was prepared and produced, and Defendants did not have  
14 the opportunity to depose and examine [the expert] regarding the reliability of his  
15 opinions”).

16 In addition, Dr. Rosenberg’s basic assertion that a check-box or push-button  
17 feature would be better is based on a demonstrably false premise – that filers always  
18 comply with filing requirements regarding confidential complaints. OCSC has  
19 already established numerous examples where filers disregarded an express  
20 requirement to note confidential treatment on the caption page of a complaint. *See*  
21 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact  
22 number of these examples, CNS concedes that 13 confidential complaints would  
23 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC  
24 SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes the dispositive fact  
25 that, but for LPS review, more than a dozen confidential complaints would have been  
26 made public. Consequently, because we know that leaving the confidentiality  
27 determination to filers is not a failsafe approach, LPS review would still be required  
28 for the Court to fulfill its obligation to do all it can to ensure that complaints that are

1 required by law to be kept confidential are not accidentally made public. Cal. Civ.  
2 Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a);  
3 Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao's Kitchen, Inc.*,  
4 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF  
5 No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

6 **OBJECTION NO. 50:**

7 “None of these concerns should present an issue for implementing the  
8 improved, safer, and more efficient user interface proposed above. First, thee-filing  
9 system can easily assign a temporary case number or other identifier automatically  
10 as soon as the complaint is e-fil~ and that number can subsequently be  
11 automatically linked to and replaced by a permanent case number assigned by the  
12 LPS at a later time. Programming these system upgrades is a relatively simple and  
13 short task. Second, the Court can easily program its system to post a notice in the  
14 initial public access screen that a complaint has not been officially accepted by the  
15 Court and may be rejected for a variety of issues, such as non-payment of fees.  
16 Programming these system upgrades is also a relatively simple and inexpensive  
17 task.” (ECF No. 89, Rosenberg Decl. ¶ 11, 5:25-6:7.)

18 **GROUND FOR OBJECTION NO. 50:**

19 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
20 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

21 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1) OCSC's CCMS; 2) the functionality of CCMS with respect to designation of  
22 confidential complaints or complaints that are to be sealed; and 3) whether and how  
23 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.  
24 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –  
25 because he has none – and thus cannot know its technological capabilities,  
26 functionality, and/or possibilities.

27 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV

1 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in “Human  
2 Factors,” and describes himself as “[a]n accomplished human factors engineer ...  
3 specializing in analysis and design of mobile computing devices, complex systems,  
4 user centered design, information architecture, user experience....” ECF No. 89,  
5 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
6 background or expertise in computer programming generally or in the programming  
7 or creation of court case management systems specifically.

8 As a result, Dr. Rosenberg is not qualified to opine as to CCMS’s capabilities  
9 and functionality, nor is he qualified to opine as to what may or may not be possible  
10 with respect to re-programming the system to add new features or functions. *See*  
11 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839  
12 (courts properly exclude expert testimony where expert offers opinions outside area  
13 of expertise).

14 Furthermore, Dr. Rosenberg’s opinion on these matters should be excluded  
15 because they are not “reliable,” as required for the admission of scientific expert  
16 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
17 personal knowledge of OCSC’s computer systems or that his opinions are based on  
18 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
19 be shown by personal knowledge or scientific basis). And “[a]n opinion based on ...  
20 unsubstantiated and undocumented information is the antithesis of the scientifically  
21 reliable expert opinion admissible under *Daubert* and Rule 702.” *Cabrera*, 134 F.3d  
22 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning  
23 underlying his opinions. That is fatal. An expert must, at minimum, provide the  
24 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does  
25 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,  
26 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

27 Dr. Rosenberg’s opinions on these matters should also be excluded because he  
28 failed to provide the necessary written disclosures under Federal Rule of Civil

1 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have  
2 applied them when an expert’s testimony is offered to the court in connection with  
3 summary judgment motions, reasoning that in such situations, the expert has ‘entered  
4 the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.  
5 Rosenberg has not disclosed what Rule 26 requires, which includes “the facts or data  
6 considered by the witness in forming” his opinion; a list of prior cases in which the  
7 witness has served as an expert witness; and the witness’s compensation. Fed. R.  
8 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s declaration provides no  
9 detail regarding the facts or data he considered in forming his various conclusions.  
10 And a report that describes “none of the underlying data or observations” relied on  
11 by the expert is deficient. *Taser Int’l*, 2007 WL 2947564, at \*8-9. Because Dr.  
12 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was  
13 never given the opportunity to probe the basis of his views, including by deposition.  
14 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9 (excluding  
15 expert testimony where the defendant was rendered unable to effectively respond to  
16 testimony because of party’s failure to disclose); *Colony Holdings*, 2001 WL  
17 1398403, at \*6 (excluding testimony because expert “was not disclosed as an expert  
18 witness, no expert report was prepared and produced, and Defendants did not have  
19 the opportunity to depose and examine [the expert] regarding the reliability of his  
20 opinions”).

21 In addition, Dr. Rosenberg’s assertion that a check-box or push-button  
22 feature would be more efficient is based on a demonstrably false premise – that  
23 filers always comply with filing requirements regarding confidential complaints.  
24 OCSC has already established numerous examples where filers disregarded an  
25 express requirement to note confidential treatment on the caption page of a  
26 complaint. *See* ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles  
27 with the exact number of these examples, CNS concedes that 13 confidential  
complaints would have been made public but for LPS review. ECF No. 84, CNS

1 Response to OCSC SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS  
2 concedes the dispositive fact that, but for LPS review, more than a dozen  
3 confidential complaints would have been made public. Consequently, because we  
4 know that leaving the confidentiality determination to filers is not a failsafe  
5 approach, LPS review would still be required for the Court to fulfill its obligation to  
6 do all it can to ensure that complaints that are required by law to be kept  
7 confidential are not accidentally made public. Cal. Civ. Proc. Code § 1277(b)(3);  
8 Cal. Rs. Ct. 2.575-2.577; Cal. Rs. Ct. 2.571(e), 2.573(a); Cal. Ins. Code §  
9 1871.7(e)(2); Cal. Civ. Proc. Code § 340.1(m); *Mao’s Kitchen, Inc.*, 209 Cal. App.  
10 4th at 149; Cal. R. Ct. 3.54; Cal. Elec. Code § 2166–2166.5; *see* ECF No. 75-2,  
11 Ochoa Decl. ¶ 30; ECF No. 75-3, Kruse Decl. ¶ 13.

12 **OBJECTION NO. 51:**

13 “Implementing this proposed system would not require the LPS to open up  
14 the complaint twice. Access could be provided on receipt before the LPS reviews  
15 the complaint, with the complaint only being opened once later as the LPS is able to  
16 turn their attention to the complaint. If the LPS for some reason were to decide that  
17 the initial designation of the case as “confidential” or “conditionally under seal” by  
18 the e-filer was erroneous, the LPS could simply access the existing drop-down  
19 security menu (as they currently do) and change the security level set in the system  
20 from “2” to “1,” and thereby trigger an automated notice to the e-filer that the  
21 security level had been downgraded. Thus, the “single touch” approach favored by  
22 Mr. Yamasaki, as reflected in the excerpts of his deposition transcripts that I  
23 reviewed would be maintained.” (ECF No. 89, Rosenberg Decl. ¶ 12, 6:8-18.)

24 **GROUND FOR OBJECTION NO. 51:**

25 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
26 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

27 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)  
28 OCSC’s CCMS; 2) the functionality of CCMS with respect to designation of

1 confidential complaints or complaints that are to be sealed; and 3) whether and how  
2 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.  
3 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –  
4 because he has none – and thus cannot know its technological capabilities,  
5 functionality, and/or possibilities.

6 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV  
7 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human  
8 Factors," and describes himself as "[a]n accomplished human factors engineer ...  
9 specializing in analysis and design of mobile computing devices, complex systems,  
10 user centered design, information architecture, user experience...." ECF No. 89,  
11 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
12 background or expertise in computer programming generally or in the programming  
13 or creation of court case management systems specifically.

14 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities  
15 and functionality, nor is he qualified to opine as to what may or may not be possible  
16 with respect to re-programming the system to add new features or functions. *See*  
17 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839  
18 (courts properly exclude expert testimony where expert offers opinions outside area  
19 of expertise).

20 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded  
21 because they are not "reliable," as required for the admission of scientific expert  
22 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
23 personal knowledge of OCSC's computer systems or that his opinions are based on  
24 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
25 be shown by personal knowledge or scientific basis). And "[a]n opinion based on ...  
26 unsubstantiated and undocumented information is the antithesis of the scientifically  
27 reliable expert opinion admissible under *Daubert* and Rule 702." *Cabrera*, 134 F.3d  
28 at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of the reasoning

1 underlying his opinions. That is fatal. An expert must, at minimum, provide the  
2 basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853. If he does  
3 not, courts rightly disregard the opinions offered as “unsubstantiated and subjective,  
4 and therefore unreliable and inadmissible.” *Id.* That is the proper course here.

5 Dr. Rosenberg’s opinions on these matters should also be excluded because  
6 he failed to provide the necessary written disclosures under Federal Rule of Civil  
7 Procedure 26(a)(2). “Although these rules refer to experts used at trial, courts have  
8 applied them when an expert’s testimony is offered to the court in connection with  
9 summary judgment motions, reasoning that in such situations, the expert has  
10 ‘entered the judicial arena.’” *S. Yuba River Citizens League*, 257 F.R.D. at 611.  
11 Here, Dr. Rosenberg has not disclosed what Rule 26 requires, which includes “the  
12 facts or data considered by the witness in forming” his opinion; a list of prior cases  
13 in which the witness has served as an expert witness; and the witness’s  
14 compensation. Fed. R. Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg’s  
15 declaration provides no detail regarding the facts or data he considered in forming  
16 his various conclusions. And a report that describes “none of the underlying data or  
17 observations” relied on by the expert is deficient. *Taser Int’l*, 2007 WL 2947564,  
18 at \*8-9. Because Dr. Rosenberg did not disclose what he was required to under  
19 Rule 26, Yamasaki was never given the opportunity to probe the basis of his views,  
20 including by deposition. Exclusion of his testimony is therefore warranted. *See,*  
21 *e.g., id.* at \*8-9 (excluding expert testimony where the defendant was rendered  
22 unable to effectively respond to testimony because of party’s failure to disclose);  
23 *Colony Holdings*, 2001 WL 1398403, at \*6 (excluding testimony because expert  
24 “was not disclosed as an expert witness, no expert report was prepared and  
25 produced, and Defendants did not have the opportunity to depose and examine [the  
26 expert] regarding the reliability of his opinions”).

27 In addition, Dr. Rosenberg’s basic assertion that a check-box or push-button  
28 feature would be better is based on a demonstrably false premise – that filers

1 always comply with filing requirements regarding confidential complaints. OCSC  
2 has already established numerous examples where filers disregarded an express  
3 requirement to note confidential treatment on the caption page of a complaint. *See*  
4 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact  
5 number of these examples, CNS concedes that 13 confidential complaints would  
6 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC  
7 SUF (“CNS Resp. to SUF”), ¶ 21. In other words, CNS concedes the dispositive  
8 fact that, but for LPS review, more than a dozen confidential complaints would  
9 have been made public. Consequently, because we know that leaving the  
10 confidentiality determination to filers is not a failsafe approach, LPS review would  
11 still be required for the Court to fulfill its obligation to do all it can to ensure that  
12 complaints that are required by law to be kept confidential are not accidentally  
13 made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs.  
14 Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code §  
15 340.1(m); *Mao’s Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal.  
16 Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3,  
17 Kruse Decl. ¶ 13.

18 **OBJECTION NO. 52:**

19 “In conclusion, it is my opinion that OCSC could better assure that e-filed  
20 complaints to be conditionally sealed or that must be kept confidential by statute are  
21 in fact kept inaccessible to the public by changing its e-filing user interface to  
22 require the filer to either check a box or make radio-button selections on the  
23 interface, which would designate whether public access should be allowed to the  
24 complaint or not. This would eliminate the additional possibility for human error  
25 that the present system poses by making the security of the complaint dependent on  
26 the LPS catching one of several specific key words or statutory code sections in the  
27 text-based comment box of OCSC’s e-filing interface or on the face page of the  
28 complaint. Such an upgrade to the current system would not increase the risk that

1 confidential or conditionally sealed complaints might be made accessible to the  
2 public. Such an upgrade would also allow the public to access any complaint that  
3 the filer's selections have coded as being appropriate for public access, in a timely  
4 manner after the e-filer submits the complaint to the court and before clerk review  
5 or other processing." (ECF No. 89, Rosenberg Decl. ¶ 13. 6:19-7:6.)

6 **GROUND FOR OBJECTION NO. 52:**

7 **Lack of foundation; improper expert opinion; lack of reliability; failure**  
8 **to submit expert disclosures.** Fed. R. Evid. 702, 703; Fed. R. Civ. P. 26, 37.

9 Dr. Rosenberg fails to establish foundation for his purported knowledge of 1)  
10 OCSC's CCMS; 2) the functionality of CCMS with respect to designation of  
11 confidential complaints or complaints that are to be sealed; and 3) whether and how  
12 CCMS could be re-programmed or upgraded by OCSC programmers. Dr.  
13 Rosenberg does not profess to have any knowledge of or familiarity with CCMS –  
14 because he has none – and thus cannot know its technological capabilities,  
15 functionality, and/or possibilities.

16 Dr. Rosenberg also lacks expertise in the relevant area. Dr. Rosenberg's CV  
17 reveals that he has advanced degrees, specifically an M.S. and Ph.D., in "Human  
18 Factors," and describes himself as "[a]n accomplished human factors engineer ...  
19 specializing in analysis and design of mobile computing devices, complex systems,  
20 user centered design, information architecture, user experience...." ECF No. 89,  
21 Rosenberg Decl. ¶ 2, Ex. 1 (p. 9). Dr. Rosenberg does not profess to have any  
22 background or expertise in computer programming generally or in the  
23 programming or creation of court case management systems specifically.

24 As a result, Dr. Rosenberg is not qualified to opine as to CCMS's capabilities  
25 and functionality, nor is he qualified to opine as to what may or may not be possible  
26 with respect to re-programming the system to add new features or functions. *See*  
27 *Daubert*, 509 U.S. 579; *see also Kumho Tire*, 526 US 137; *Avila*, 633 F.3d at 839  
28 (courts properly exclude expert testimony where expert offers opinions outside area

1 of expertise).

2 Furthermore, Dr. Rosenberg's opinion on these matters should be excluded  
3 because they are not "reliable," as required for the admission of scientific expert  
4 testimony. *See Daubert* 509 U.S. at 589. Dr. Rosenberg does not demonstrate  
5 personal knowledge of OCSC's computer systems or that his opinions are based on  
6 scientific foundations. *See Morrison*, 2016 WL 3457725, at \*3–4 (reliability may  
7 be shown by personal knowledge or scientific basis). And "[a]n opinion based  
8 on ... unsubstantiated and undocumented information is the antithesis of the  
9 scientifically reliable expert opinion admissible under *Daubert* and Rule 702."  
10 *Cabrera*, 134 F.3d at 1423. Indeed, Dr. Rosenberg gives no sense whatsoever of  
11 the reasoning underlying his opinions. That is fatal. An expert must, at minimum,  
12 provide the basis for his scientific conclusions. *See, e.g., Diviero*, 114 F.3d at 853.  
13 If he does not, courts rightly disregard the opinions offered as "unsubstantiated and  
14 subjective, and therefore unreliable and inadmissible." *Id.* That is the proper  
15 course here.

16 Dr. Rosenberg's opinions on these matters should also be excluded because he  
17 failed to provide the necessary written disclosures under Federal Rule of Civil  
18 Procedure 26(a)(2). "Although these rules refer to experts used at trial, courts have  
19 applied them when an expert's testimony is offered to the court in connection with  
20 summary judgment motions, reasoning that in such situations, the expert has 'entered  
21 the judicial arena.'" *S. Yuba River Citizens League*, 257 F.R.D. at 611. Here, Dr.  
22 Rosenberg has not disclosed what Rule 26 requires, which includes "the facts or data  
23 considered by the witness in forming" his opinion; a list of prior cases in which the  
24 witness has served as an expert witness; and the witness's compensation. Fed. R.  
25 Civ. P. 26(a)(2)(B). As already explained, Dr. Rosenberg's declaration provides no  
26 detail regarding the facts or data he considered in forming his various conclusions.  
27 And a report that describes "none of the underlying data or observations" relied on  
28 by the expert is deficient. *Taser Int'l*, 2007 WL 2947564, at \*8-9. Because Dr.

1 Rosenberg did not disclose what he was required to under Rule 26, Yamasaki was  
2 never given the opportunity to probe the basis of his views, including by deposition.  
3 Exclusion of his testimony is therefore warranted. *See, e.g., id.* at \*8-9 (excluding  
4 expert testimony where the defendant was rendered unable to effectively respond to  
5 testimony because of party's failure to disclose); *Colony Holdings*, 2001 WL  
6 1398403, at \*6 (excluding testimony because expert "was not disclosed as an expert  
7 witness, no expert report was prepared and produced, and Defendants did not have  
8 the opportunity to depose and examine [the expert] regarding the reliability of his  
9 opinions").

10 In addition, Dr. Rosenberg's conclusion that a check-box or push-button  
11 feature would be better is based on a demonstrably false premise – that filers  
12 always comply with filing requirements regarding confidential complaints. OCSC  
13 has already established numerous examples where filers disregarded an express  
14 requirement to note confidential treatment on the caption page of a complaint. *See*  
15 ECF No. 75-2, Ochoa Decl. ¶¶ 21-22. And while CNS quibbles with the exact  
16 number of these examples, CNS concedes that 13 confidential complaints would  
17 have been made public but for LPS review. ECF No. 84, CNS Response to OCSC  
18 SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS concedes the dispositive  
19 fact that, but for LPS review, more than a dozen confidential complaints would  
20 have been made public. Consequently, because we know that leaving the  
21 confidentiality determination to filers is not a failsafe approach, LPS review would  
22 still be required for the Court to fulfill its obligation to do all it can to ensure that  
23 complaints that are required by law to be kept confidential are not accidentally  
24 made public. Cal. Civ. Proc. Code § 1277(b)(3); Cal. Rs. Ct. 2.575-2.577; Cal. Rs.  
25 Ct. 2.571(e), 2.573(a); Cal. Ins. Code § 1871.7(e)(2); Cal. Civ. Proc. Code §  
26 340.1(m); *Mao's Kitchen, Inc.*, 209 Cal. App. 4th at 149; Cal. R. Ct. 3.54; Cal.  
27 Elec. Code § 2166–2166.5; *see* ECF No. 75-2, Ochoa Decl. ¶ 30; ECF No. 75-3,  
28 Kruse Decl. ¶ 13.

1           **IV. OBJECTION TO DEPOSITION OF JONATHAN FETTERLY**

2           **OBJECTION NO. 53:**

3           “Attached hereto as Exhibit 16 are true and correct copies of excerpts from  
4           Sara Ochoa’s deposition transcript relating to the issues raised in Defendant’s Motion  
5           for Summary Judgment, and related exhibits..” (ECF No. 90, Declaration of  
6           Johnathan Fetterly (“Fetterly Decl.”) ¶ 15, 3:13-15.)

7           **GROUNDS FOR OBJECTION NO. 53:**

8           **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
9           R. Evid. 701.

10           “It is insufficient for a party to submit, without more, an affidavit from [ ]  
11           counsel identifying the names of the deponent, the reporter, and the action and stating  
12           that the deposition is a ‘true and correct copy.’” *Orr v. Bank of Am., NT & SA*, 285  
13           F.3d 764, 774 (9th Cir. 2002). “Such an affidavit lacks foundation even if the affiant-  
14           counsel were present at the deposition.” *See id.*

15           Here, because Exhibit 16 does not contain a signed court reporter certification  
16           page, *see* ECF No. 91, p. 901, Mr. Fetterly’s declaration that the transcript is a “true  
17           and correct copy” is insufficient to authenticate the exhibit. Further, Mr. Fetterly’s  
18           statement that the related deposition exhibits are attached is false. The deposition  
19           transcript attached as Exhibit 16 does not contain any exhibits.

20           **OBJECTION NO. 54:**

21           ECF No. 91, Exhibit 16 to Fetterly Decl. (pp. 749-901).

22           **GROUNDS FOR OBJECTION NO. 54:**

23           **Not properly authenticated.** Fed. R. Evid. 901.

24           “A deposition or an extract therefrom is authenticated in a motion for summary  
25           judgment when it identifies the names of the deponent and the action and includes  
26           the reporter’s certification that the deposition is a true record of the testimony of the  
27           deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone v. Citicorp Credit Servs.*,

1 *Inc.*, 60 F.Supp.2d 1040, 1045 (S.D. Cal. 1997) (excluding a deposition for failure to  
2 submit a signed certification from the reporter).

3 Here, Exhibit 16 does not contain a signed court reporter certification page.  
4 ECF No. 91, p. 901. Thus, the deposition transcript has not been properly  
5 authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the  
6 related deposition exhibits are attached is false. The deposition transcript attached  
7 as Exhibit 16 does not contain any exhibits.

8 **OBJECTION NO. 55:**

9 "Attached hereto as Exhibit 17 are true and correct copies of excerpts from  
10 Debbie Kruse's deposition transcript relating to the issues raised in Defendant's  
11 Motion for Summary Judgment, and related exhibits." (ECF No. 90, Fetterly Decl.  
12 ¶ 16, 3:13-15.)

13 **GROUND FOR OBJECTION NO. 55:**

14 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
15 R. Evid. 701.

16 "It is insufficient for a party to submit, without more, an affidavit from [ ]  
17 counsel identifying the names of the deponent, the reporter, and the action and stating  
18 that the deposition is a 'true and correct copy.'" *Orr*, 285 F.3d 764, 774 (9th Cir.  
19 2002). "Such an affidavit lacks foundation even if the affiant-counsel were present  
20 at the deposition." *See id.*

21 Here, because Exhibit 17 does not contain a signed court reporter certification  
22 page, *see* ECF No. 91, p. 1043, Mr. Fetterly's declaration that the transcript is a "true  
23 and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's  
24 statement that the related deposition exhibits are attached is false. The deposition  
25 transcript attached as Exhibit 17 does not contain any exhibits.

26 **OBJECTION NO. 56:**

27 ECF No. 91, Exhibit 17 to Fetterly Decl. (pp. 902-1043).

28

1 **GROUND FOR OBJECTION NO. 56:**

2 **Not properly authenticated.** Fed. R. Evid. 901.

3 “A deposition or an extract therefrom is authenticated in a motion for summary  
4 judgment when it identifies the names of the deponent and the action and includes  
5 the reporter’s certification that the deposition is a true record of the testimony of the  
6 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045  
7 (excluding a deposition for failure to submit a signed certification from the reporter).

8 Here, Exhibit 17 does not contain a signed court reporter certification page.  
9 ECF No. 91, p. 1043. Thus, the deposition transcript has not been properly  
10 authenticated and is therefore inadmissible. Further, Mr. Fetterly’s statement that the  
11 related deposition exhibits are attached is false. The deposition transcript attached  
12 as Exhibit 17 does not contain any exhibits.

13 **OBJECTION NO. 57:**

14 “Attached hereto as Exhibit 18 are true and correct copies of excerpts from  
15 David Yamasaki’s deposition transcript relating to the issues raised in Defendant’s  
16 Motion for Summary Judgment, and related exhibits.” (ECF No. 90, Fetterly Decl.  
17 ¶ 17, 3:21-23.)

18 **GROUND FOR OBJECTION NO. 57:**

19 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
20 R. Evid. 701.

21 “It is insufficient for a party to submit, without more, an affidavit from [ ]  
22 counsel identifying the names of the deponent, the reporter, and the action and stating  
23 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an  
24 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”

25 *See id.*

26 Here, because Exhibit 18 does not contain a signed court reporter certification  
27 page, *see* ECF No. 91, p. 1198, Mr. Fetterly’s declaration that the transcript is a “true  
28 and correct copy” is insufficient to authenticate the exhibit. Further, Mr. Fetterly’s

1 statement that the related deposition exhibits are attached is false. The deposition  
2 transcript attached as Exhibit 18 does not contain any exhibits.

3 **OBJECTION NO. 58:**

4 ECF No. 91, Exhibit 18 to Fetterly Decl. (pp. 1044-1198).

5 **GROUNDS FOR OBJECTION NO. 58:**

6 **Not properly authenticated.** Fed. R. Evid. 901.

7 “A deposition or an extract therefrom is authenticated in a motion for summary  
8 judgment when it identifies the names of the deponent and the action and includes  
9 the reporter’s certification that the deposition is a true record of the testimony of the  
10 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045  
11 (excluding a deposition for failure to submit a signed certification from the reporter).

12 Here, Exhibit 18 does not contain a signed court reporter certification page.  
13 ECF No. 91, p. 1198. Thus, the deposition transcript has not been properly  
14 authenticated and is therefore inadmissible. Further, Mr. Fetterly’s statement that the  
15 related deposition exhibits are attached is false. The deposition transcript attached  
16 as Exhibit 18 does not contain any exhibits.

17 **OBJECTION NO. 59:**

18 “Attached hereto as Exhibit 19 are true and correct copies of excerpts from  
19 Jeff Wertheimer’s deposition transcript relating to the issues raised in Defendant’s  
20 Motion for Summary Judgment, and related exhibits.” (ECF No. 90, Fetterly Decl.  
21 ¶ 18, 3:25-27.)

22 **GROUNDS FOR OBJECTION NO. 59:**

23 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
24 R. Evid. 701.

25 “It is insufficient for a party to submit, without more, an affidavit from [ ]  
26 counsel identifying the names of the deponent, the reporter, and the action and stating  
27 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an  
28 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”

1 *See id.*

2       Here, because Exhibit 19 does not contain a signed court reporter certification  
3 page, *see* ECF No. 91, p. 1302, Mr. Fetterly's declaration that the transcript is a "true  
4 and correct copy" is insufficient to authenticate the exhibit. Further, Mr. Fetterly's  
5 statement that the related deposition exhibits are attached is false. The deposition  
6 transcript attached as Exhibit 19 does not contain any exhibits.

7 **OBJECTION NO. 60:**

8       ECF No. 91, Exhibit 19 to Fetterly Decl. (pp. 1099-1302).

9 **GROUNDS FOR OBJECTION NO. 60:**

10       **Not properly authenticated.** Fed. R. Evid. 901.

11       "A deposition or an extract therefrom is authenticated in a motion for summary  
12 judgment when it identifies the names of the deponent and the action and includes  
13 the reporter's certification that the deposition is a true record of the testimony of the  
14 deponent." *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045  
15 (excluding a deposition for failure to submit a signed certification from the reporter).

16       Here, Exhibit 19 does not contain a signed court reporter certification page.  
17 ECF No. 91, p. 1302. Thus, the deposition transcript has not been properly  
18 authenticated and is therefore inadmissible. Further, Mr. Fetterly's statement that the  
19 related deposition exhibits are attached is false. The deposition transcript attached  
20 as Exhibit 19 does not contain any exhibits.

21 **OBJECTION NO. 61:**

22       "Attached hereto as Exhibit 20 are true and correct copies of excerpts from  
23 Michael Planet's deposition transcript in that matter relating to the issues raised in  
24 Defendant's Motion for Summary Judgment, and related exhibits." (ECF No. 90,  
25 Fetterly Decl. ¶ 19, 4:5-7.)

26 **GROUNDS FOR OBJECTION NO. 61:**

27       **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
28 R. Evid. 701.

1        “It is insufficient for a party to submit, without more, an affidavit from [ ]  
2 counsel identifying the names of the deponent, the reporter, and the action and stating  
3 that the deposition is a ‘true and correct copy.’” *Orr*, 285 F.3d at 774. “Such an  
4 affidavit lacks foundation even if the affiant-counsel were present at the deposition.”  
5 *See id.*

6        Here, because Exhibit 20 does not contain a signed court reporter certification  
7 page, *see* ECF No. 91, p. 1319, Mr. Fetterly’s declaration that the transcript is a “true  
8 and correct copy” is insufficient to authenticate the exhibit.

9        **OBJECTION NO. 62:**

10        ECF No. 91, Exhibit 20 to Fetterly Decl. (pp. 1303-1333).

11        **GROUNDS FOR OBJECTION NO. 62:**

12        **Not properly authenticated; inadmissible hearsay.** Fed. R. Evid. 901; Fed.  
13 R. Evid. 801, 802.

14        “A deposition or an extract therefrom is authenticated in a motion for summary  
15 judgment when it identifies the names of the deponent and the action and includes  
16 the reporter’s certification that the deposition is a true record of the testimony of the  
17 deponent.” *Orr*, 285 F.3d at 774 (9th Cir. 2002); *Pavone*, 60 F.Supp.2d at 1045  
18 (excluding a deposition for failure to submit a signed certification from the reporter).  
19 Here, Exhibit 20 does not contain a signed court reporter certification page. ECF No.  
20 91, p. 1319. Thus, the deposition transcript has not been properly authenticated and  
21 is therefore inadmissible.

22        Further, the deposition transcript and accompanying exhibits constitute  
23 inadmissible hearsay as out-of-court statements offered for the truth of the matters  
24 asserted.

25        **OBJECTION NO. 63:**

26        “The declarations filed as and comprising ECF Document Nos. 12 through 12-  
27 3 in this case are all true and correct copies of the declarations previously filed in the  
28 *Planet* case.” (ECF No. 90, Fetterly Decl. ¶ 21, 4:19-21.)

1 **GROUNDΣ FOR OBJECTION NO. 63:**

2 **Lack of foundation as to personal knowledge.** Fed. R. Evid. 601, 602; Fed.  
3 R. Evid. 701.

4 Mr. Fetterly's declaration does not lay adequate foundation for declarations  
5 filed in another proceeding. It is not enough that Mr. Fetterly characterizes the  
6 declarations as "true and correct copies." *Beyene v. Coleman Sec. Servs., Inc.*, 854  
7 F.2d 1179, 1182 (9th Cir. 1988).

8 **V. OBJECTIONS TO COURT REPORTER DECLARATIONS IN ECF**  
9 **NO. 12**

10 **OBJECTION NO. 64:**

11 ECF No. 12 through ECF No. 12-3, Exs. 1-36 to RJD (p. 1-417).

12 **GROUNDΣ FOR OBJECTION NO. 64:**

13 **Not properly authenticated; inadmissible hearsay; irrelevant.** Fed. R.  
14 Evid. 901; Fed. R. Evid. 801, 802; Fed. R Evid. 401, 402.

15 These declarations were prepared for and were submitted in another  
16 proceeding. Given that Mr. Fetterly did not properly authenticate the declarations,  
17 they are inadmissible.

18 Further, the declarations contain inadmissible hearsay. *See* ECF No. 12,  
19 Abbott Decl. ¶ 9 ("The following is a description of procedures used at some of the  
20 courts covered by CNS reporters under my supervision."); ECF No. 12, Angione  
21 Decl. ¶ 8 (as a supervisor he "observed and experienced the procedures used by  
22 reporters in many of these courts to access and review new civil complaints"); ECF  
23 No. 12, Brown Decl. ¶ 5 (as a supervisor she "observe[d] CNS's procedures for  
24 reviewing new civil complaints received for filing in these courts."); ECF No. 12,  
25 Marshall Decl. ¶ 9 (as a supervisor he has "observed and experienced the procedures  
26 used by CNS's reporters in many of these courts to access and review new civil  
27 complaints received by those courts for filing."); ECF No. 12, Venza Decl. ¶ 19 (as  
28

1 a supervisor she has “observed CNS reporters use the following procedures to review  
2 new civil petitions.”). Thus, these out-of court-statements cannot be offered for their  
3 truth because they are not subject to cross-examination.

4 Finally, that other courts may provide a greater or lesser extent of access to  
5 complaints, without first conducting a confidentiality review, is irrelevant to whether  
6 timely access has been provided under the circumstances of *this* case by one of the  
7 largest and busiest trial court systems in the nation and under California law that  
8 obligates OCSC to protect litigant confidentiality. Indeed, none of the declarations  
9 indicate whether these courts conduct any confidentiality review before making new  
10 complaints publicly available. Nor does CNS offer any evidence showing that the  
11 referenced state courts have confidentiality requirements similar to those imposed by  
12 California law.

13 **VI. OBJECTIONS TO OTHER COURTS' E-FILING RULES & COURT**  
14 **DOCKETS IN ECF NO. 92**  
15

16 **OBJECTION NO. 65:**

17 ECF No. 92, Exs. 1-9 to RJN (p. 5-52).

18 **GROUNDS FOR OBJECTION NO. 65:**

19 **Irrelevant.** Fed. R Evid. 401, 402.

20 As explained in OCSC’s response to CNS’s Requests for Judicial Notice, filed  
21 concurrently herewith, that other courts’ e-filing rules may require confidential filings  
22 to be filed in paper is irrelevant to whether timely access has been provided under the  
23 circumstances of *this* case by one of the largest and busiest trial court systems in the  
24 nation and under California law that obligates OCSC to protect litigant  
25 confidentiality. Indeed, none of the court rules indicate whether these courts conduct  
26 any confidentiality review before making new complaints publicly available nor  
27 correlate the purpose for filing in paper with protecting confidentiality. Further, CNS  
28 does not offer any evidence showing that the referenced courts have confidentiality

1 requirements similar to those imposed by California law.

2 **OBJECTION NO. 66:**

3 ECF No. 92, Exs. 10-13 to RJN (p. 53-77).

4 **GROUNDS FOR OBJECTION NO. 66:**

5 **Contradicted by evidence; incomplete, misleading, and prejudicial.** Fed.  
6 R. Evid. 403.

7 As explained in the declaration by Sara Ochoa submitted in support of OCSC's  
8 reply brief and OCSC's response to CNS's Requests for Judicial Notice, both filed  
9 concurrently herewith, the court dockets for four Orange County Superior Court  
10 contained in Exhibits 10-13 are contradicted by other evidence in this matter,  
11 incomplete, misleading and prejudicial.

12 CNS cites these exhibits in response to OCSC's assertion in its Statement of  
13 Uncontested Facts and Conclusions of Law ("SUF") for the proposition that "[a]t  
14 most, 13 of the cases listed in Exhibits A and B to the Ochoa Declaration and referred  
15 to in Paragraph 21 of the Ochoa Declaration represent case-initiating filings where  
16 an LPS properly kept a document confidential based on LPS review." ECF No. 84,  
17 ¶ 21. CNS appears to contend that because a case initiating document is currently  
18 available on the public dockets in these matters, OCSC's statement is somehow  
19 untrue. But CNS's position is unsupported.

20 In some of the cases that CNS cites, certain attachments to the complaints *were*  
21 *properly* filed under seal and remain under seal; and in one case that CNS cites, an  
22 unredacted version of a complaint *was properly* filed under seal and remains under  
23 seal, while the redacted version of the complaint is available on the public docket.  
24 Ochoa Decl. ISO Reply ¶¶ 19(a)-(c), 20. Thus, CNS's reliance on these cases is  
25 inapposite. These cases do not undermine OCSC's position that but for LPS review,  
26 the attachments to the complaints or the unredacted version of a complaint would  
27 have been publicly available. *See id.*

28

1 Dated: January 16, 2018

JONES DAY

2

3

By: /s/ Robert A. Naeve  
Robert A. Naeve

4

5

Attorneys for Defendant  
DAVID YAMASAKI

6

7

NAI-1503341898v1

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28